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No. 439

No. 15268

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United States Court of Appeals

for the Ninth Circuit

CHIN BICK WAH,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Two Volumes

Volume I

(Pages 1 to 324)

Appeal from the United States District Court for the Northern District of California, Southern Division.

FILED
DEC - 3 1956
PAUL P. O'BRIEN, CLERK

No. 15208

United States
Court of Appeals
for the Ninth Circuit

CHIN BICK WAH,

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UNITED STATES OF AMERICA,

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Volume I
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Appeal from the United States District Court for the Northern District of California.
Southern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—11-16-56

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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(p. 2 de Marsh)

In the United States District Court for the Northern District of California, Southern Division

Criminal No. 35037

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FONG WY SUM, CHIN BICK WAH, and ROBERT LEONARD LEVY,

Defendants.

INDICTMENT

(Violations: 18 U.S.C. § 371; 8 U.S.C. § 1324; 18 U.S.C. § 1542; 18 U.S.C. § 1546.)

First Count: (18 U.S.C. § 371.)

The Grand Jury charges that:

1. Commencing on or about January 1, 1950, and continuously thereafter up to and including the date of the return of this indictment, in the City and County of San Francisco, Northern District of California; in the City of Reno, Nevada; and in the British Crown Colony of Hong Kong (hereinafter referred to as Hong Kong),

Fong Wy Sum, aka William W. Fong;

Chin Bick Wah, aka Helen B. Fong, aka Helen B. Chin, aka Faye Y. Chin; and

Robert Leonard Levy,

hereinafter referred to as the defendants, did wilfully, knowingly and unlawfully conspire, combine,

confederate and agree with each other and with Fong Yee Shee, aka Yee Shee; Fong Kim Quon, aka Benton K. Fong; Ruby Fong Yee; Chin Yood Sen, aka Chin Jung; Jonathan K. Yee, aka Yee How Kee, aka Yee Yuen Foon; and Jean Jow Yee, and with other persons to the Grand Jury unknown, all of which persons, named and unknown, other than the defendants themselves, will hereinafter be referred to as the co-conspirators, said co-conspirators being not named as defendants nor indicted herein,

(A) To commit offenses against the United States to wit:

(1) The crime of wilfully and knowingly bringing into the United States an alien not lawfully entitled to enter or reside therein, in violation of 8 U.S.C. § 1324;

(2) The crime of wilfully and knowingly encouraging and inducing the illegal entry of an alien into the United States, in violation of 8 U.S.C. § 1324;

(3) The crime of entry by an alien into the United States by fraud, misrepresentations and concealment of material facts, in violation of 8 U.S.C. § 1325;

(4) The crime of wilfully and knowingly making and using false statements, in violation of 18 U.S.C. § 1001;

(5) The crime of wilfully and knowingly making false statements in an application for a passport

with intent to induce or secure the issuance thereof in violation of 18 U.S.C. § 1542;

(6) The crime of knowingly using, possessing, obtaining and receiving an immigration visa knowing it to have been procured by false claims and statements and otherwise procured by fraud, in violation of 18 U.S.C. § 1546; and

(7) The crime of knowingly making under oath false statements in applications, affidavits and other documents required by immigration laws and regulations prescribed thereunder; in violation of 18 U.S.C. § 1546, and

(B) To defraud the United States of and concerning:

(1) Its governmental function and right to administer the immigration laws of the United States and regulations promulgated pursuant thereto, particularly those laws and regulations governing the admission, exclusion and registration of aliens;

(2) Its governmental function and right to administer the Foreign Service of the United States Department of State and the Immigration and Naturalization Service of the United States Department of Justice; and its governmental function and right to have the business and affairs of the Foreign Service and the Immigration and Naturalization Service, and the consideration, administration, investigation, and disposition of matters affecting and affected by the Foreign Service and the Immigra-

tion and Naturalization Service, conducted in its behalf free from fraud, deceit, misrepresentation and concealment of material facts.

2. In the year 1939 Fong Wy Sum and his mother Fong Yee Shee conspired and agreed with Jonathan K. Yee, a Chinese alien, to assist him in effecting an illegal entry into the United States by purchasing for Jonathan K. Yee a fictitious identity as a derivative citizen of the United States. In consideration thereof Jonathan K. Yee agreed to pay to Fong Wy Sum the amount of $2,000.00 for the purchase of the fictitious identity and the expenses of passage to the United States. Pursuant to the agreement Jonathan K. Yee entered the United States on December 24, 1939, under the fictitious identity of Yee Yuen Foon, and in the years thereafte paid Fong Wy Sum amounts in excess of $2,000.00, as demanded by Fong Wy Sum.

3. In the year 1948 Fong Wy Sum, then residing in the United States, began corresponding with Chin Bick Wah, a Chinese alien, residing in Hong Kong, and sent her money and gifts. He thereafter offered to bring her to the United States to become his concubine or "No. 2 Wife."

4. In the year 1949 Fong Wy Sum attempted to obtain an immigration visa for Chin Bick Wah to enter the United States as a student nurse. In the years 1949 and 1950 Fong Wy Sum attempted to purchase a fictitious identity for Chin Bick Wah as a derivative citizen.

5. During the period from October 1, 1950, through April 3, 1951, Fong Wy Sum, Robert Leonard Levy and Fong Yee Shee induced and procured Jonathan K. Yee and his wife Jean Jow Yee to participate in the conspiracy to effect the illegal entry of Chin Bick Wah, by repeated urgings, blandishments, and pressures, including representations that Jonathan K. Yee was obligated and required to enter the conspiracy because of the fact that Jonathan K. Yee's entry into the United States had been effected by Fong Wy Sum and Fong Yee Shee.

6. The unlawful combination, conspiracy, confederation, and agreement was to be accomplished by the following means and methods:

(A) Jonathan K. Yee, counseled and assisted by Robert Leonard Levy, an attorney, would secure a sham divorce from Jean Jow Yee;

(B) Jonathan K. Yee would file a passport application in which he and Fong Wy Sum would falsely state that Jonathan K. Yee was a citizen of the United States and that Jonathan K. Yee desired to go to Hong Kong to visit relatives, and in which Fong Wy Sum would falsely state that he was not related to Jonathan K. Yee;

(C) Jonathan K. Yee would go to Hong Kong and participate in a sham ceremony of marriage with Chin Bick Wah;

(D) Jonathan K. Yee would file with the United States Department of State a petition for issuance

of immigration visa for Chin Bick Wah, a Chinese alien, in which petition Jonathan K. Yee, Fong Wy Sum and Fong Kim Quong would falsely state that Jonathan K. Yee was a citizen of the United States, that he was the son of Yee Hing Bow, and that he was married to Chin Bick Wah;

(E) Chin Bick Wah would file with the United States Department of State an application for immigration visa and alien registration in which she would falsely state that she was married to Jonathan K. Yee, a citizen of the United States; that her passage to the United States was paid for by her husband Jonathan K. Yee; and that she intended to join her husband in the United States;

(F) Fong Wy Sum would pay all expenses involved, including attorney's fees, witness fees, travel expenses, and living expenses for Jonathan K. Yee in Hong Kong;

(G) Chin Bick Wah would use the immigration visa to enter into the United States to become Fong Wy Sum's concubine or "No. 2 Wife";

(H) Jonathan K. Yee would return to the United States and resume living with Jean Jow Y. as her husband;

(I) Chin Bick Wah would secure a divorce from Jonathan K. Yee and Jonathan K. Yee would remarry Jean Jow Yee;

(J) In the event of questioning by immigration officers, the defendants and conspirators would

counsel together and agree upon false testimony designed to prevent discovery of the conspiracy and the deportation of Chin Bick Wah.

Overt Acts

The Grand Jury further charges that the defendants and co-conspirators, in furtherance of and for the purpose of carrying into execution the combination, conspiracy, confederation and agreement did and performed the following and other overt acts, to wit:

1. On or about the 1st day of November, 1950, at 935 Stockton Street, San Francisco, in the Northern District of California, Fong Wy Sun had a conversation with Jonathan K. Yee.

2. On or about the 1st day of December, 1950, at 935 Stockton Street, San Francisco, in the Northern District of California, Fong Wy Sum had a conversation with Jean Jow Yee and Jonathan K. Yee and showed them a picture of Chin Bick Wah.

3. On or about the 1st day of January, 1951, at 935 Stockton Street, San Francisco, in the Northern District of California, Robert Leonard Levy and Fong Wy Sum had a conversation with Jean Jow Yee and Jonathan K. Lee.

4. On or about the 1st day of April, 1951, at 935 Stockton Street, San Francisco, in the Northern District of California, Robert Leonard Levy and Fong Wy Sum had a conversation with Jean Jow Yee and Jonathan K. Yee.

5. On or about the 10th day of April, 1951, in San Francisco, Northern District of California, Robert Leonard Levy gave to Jonathan K. Yee a letter of introduction to an attorney in Reno, Nevada.

6. On or about the 17th day of April, 1951, in San Francisco, Northern District of California, Robert Leonard Levy caused Jean Jow Yee to execute a power of attorney in the divorce action entitled "Jonathan K. Yee vs. Jean J. Yee," and mailed the power of attorney to Reno, Nevada.

7. On or about the 4th day of May, 1951, at 935 Stockton Street, San Francisco, in the Northern District of California, Fong Wy Sum gave the amount of $400.00 in currency to Jonathan K. Yee.

8. On the 14th day of May, 1951, in San Francisco, Northern District of California, Jonathan K. Yee executed and filed a passport application and Fong Wy Sum executed the affidavit of identifying witness therein.

9. On or about the 4th day of September, 1951, in San Francisco, Northern District of California, Fong Wy Sum gave Jonathan K. Yee a letter to sign and mail to the Passport Division of the United States Department of State.

10. On or about the 17th day of October, 1951, in San Francisco, Northern District of California, Fong Wy Sum purchased and delivered to Jonathan K. Yee a round-trip airplane ticket to Hong Kong.

11. On or about the 24th day of October, 1951, at 935 Stockton Street, San Francisco, in the Northern District of California, Fong Wy Sum gave the amount of $200.00 to Jonathan K. Yee.

12. On or about the 27th day of October, 1951, at the San Francisco Internatioinal Airport, in the Northern District of California, Ruby Fong Yee had a conversation with Jean Jow Yee.

13. On or about the 10th day of December, 1951, in the law offices of Jackson & Hertogs, 580 Washington Street, San Francisco, in the Northern District of California, Fong Wy Sum and Fong Kim Quon executed affidavits of witnesses in the petition for issuance of immigration visa for Chin Bick Wah.

14. On or about the 5th day of March, 1952, in Hong Kong, British Crown Colony, Chin Bick Wah executed and filed an application for immigration visa and alien registration with the Consul of the United States in and for the Consular District of Hong Kong.

15. On or about the 16th day of March, 1952, Chin Bick Wah arrived from Hong Kong at the San Francisco International Airport, in the Northern District of California.

16. During the period from May 1, 1953, through July 27, 1953, at 596 MacArthur Blvd., Oakland, Northern District of California, Fong Wy

Sum cohabited with Chin Bick Wah in open and notorious adultery.

17. On or about July 27, 1953, Fong Wy Sum traveled with Chin Bick Wah by automobile from the city of Oakland, in the Northern District of California, to Reno, Nevada.

18. On July 28, 1953, in Reno, Nevada, Chin Bick Wah testified in a divorce hearing and secured a decree of divorce from Jonathan K. Yee.

19. On April 4, 1956, in San Francisco, in the Northern District of California, Ruby Fong Yee had a telephone conversation with Jean Jow Yee.

20. On April 5, 1956, in San Francisco, Northern District of California, Fong Wy Sum and Fong Yee Shee had a telephone conversation with Jean Jow Yee.

Second Count: (8 U.S.C. § 1324)*

The Grand Jury further charges that:

On or about November 1, 1951, in the City and County of San Francisco, Northern District of California, Fong Wy Sum, aka William W. Fong, did wilfully and knowingly encourage and induce the entry into the United States of Chin Bick Wah, an alien not lawfully entitled to enter or reside within the United States under any law relating to the immigration of aliens.

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*Dismissed on Motion of M.S., 7/9/56.

[Entitled]: O.D.H.

Third Count: (8 U.S.C. § 1324 and 18 U.S.C. § 2)

The Grand Jury further charges that:

On or about March 15, 1952, in the Northern District of California, Fong Wy Sum, aka William W. Fong, did wilfully and knowingly bring into the United States Chin Bick Wah, an alien not lawfully entitled to enter or reside within the United States under any law relating to the immigration of aliens.

Fourth Count: (18 U.S.C. § 1542)

The Grand Jury further charges that:

On or about the 14th day of May, 1951, in the City and County of San Francisco, Northern District of California, Fong Wy Sum, aka William W. Fong, did wilfully and knowingly make statements in an application for a passport that Jonathan K. Yee was a citizen of the United States, that Jonathan K. Yee was the son of Yee Hing Bow, that the purpose of Jonathan K. Yee's proposed trip to Hong Kong was to visit his mother and other relatives, and that he was not related to Jonathan K. Yee, which statements were false, as Fong Wy Sum then and there well knew; and the statements were made by Fong Wy Sum with intent to induce and secure the issuance of a passport under the authority of the United States, contrary to the laws regulating the issuance of passports and the rules prescribed pursuant to such laws.

Fifth Count: (18 U.S.C. § 1546)

The Grand Jury further charges that:

On or about December 10, 1951, in the city of San Francisco, Northern District of California, Fong Wy Sum, aka William W. Fong, in a petition for issuance of immigration visa, a document required by the immigration laws and regulations prescribed thereunder, did wilfully and knowingly make statements under oath that Jonathan K. Yee was a citizen of the United States, that Jonathan K. Yee was the son of Yee Hing Bow and that Jonathan K. Yee was married to Chin Bick Wah, which statements were false, as Fong Wy Sum then and there well knew. The petition for issuance of immigration visa was thereafter caused by Wong Wy Sum to be filed at American Consulate of the United States Department of State at the British Crown Colony of Hong Kong.

Sixth Count: (18 U.S.C., § 1546.)

The Grand Jury further charges that:

On or about March 5, 1952, at Hong Kong British Crown Colony, Chin Bick Wah, aka Helen B. Fong, aka Helen B. Chin, aka Faye Y. Chin, who is found in the Northern District of California, did knowingly and wilfully make under oath before a Vice Consul of the United States, in an application for immigration visa and alien registration, a document required by the immigration laws and regulations prescribed thereunder, statements that she was married to Jonathan K. Yee, that her passage to

the United States was paid for by her husband Jonathan K. Yee, and that she intended to join her husband Jonathan K. Yee in the United States, which statements were false, as Chin Bick Wah then and there well knew.

A True Bill.

/s/ RICHARD A. GOCK,
Foreman.

/s/ LLOYD H. BURKE,
United States Attorney.

Approved as to Form:

/s/ J. B. SCHNAKE.

Six-Count Indictment

Violation:

18 U.S.C., § 371—Conspiracy;
8 U.S.C., § 1324—Inducing an alien to enter the United States illegally;
18 U.S.C., § 1542—False Statements in Passport Application;
18 U.S.C., § 1546—False Statements in petition for immigration visa, and application for immigration visa.

Penalty:

18 U.S.C., § 371—$10,000 fine—5 years imprisonment, or both;
8 U.S.C., § 1324—$ 2,000 fine—5 years imprisonment, or both;

18 U.S.C., § 1542—$ 2,000 fine—5 years imprisonment, or both;

18 U.S.C., § 1546—$ 2,000 fine—5 years imprisonment or both.

Bail:

Fong Wy Sum, $5,000.
Chin Bick Wah, $10,000.
Robert Leonard Levy, $5,000.

Presented in open court and ordered endorsed and filed April 11, 1956.

[Title of District Court and Cause.]

VERDICT—COUNT I.

We, the Jury, find the defendant, Chin Bick Wah Guilty of conspiracy as charged in the 1st count of the indictment.

July 17, 1956.

/s/ I. HOLANBERG,
(Foreman.)

[Endorsed]: Filed July 17, 1956.

[Title of District Court and Cause.]

VERDICT—COUNT VI.

We, the Jury, find the defendant Chin Bick Wah Guilty as charged in the sixth count of the indictment.

July 17, 1956.

/s/ I. HOLANBERG,
(Foreman.)

[Endorsed]: Filed July 17, 1956.

United States District Court for the Northern District of California, Southern Division

No. 35037

UNITED STATES OF AMERICA,

vs.

CHIN BICK WAH, aka HELEN B. FONG, aka HELEN B. CHIN, aka FAYE Y. CHIN.

JUDGMENT AND COMMITMENT.

On this 27th day of July, 1956, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon her plea of not guilty and a Verdict of Guilty of the offense of following violations:

Count 1—18 USC, § 371—Conspiracy to viol.
8 USC, § 1324—Inducing an alien to enter United States illegally;
8 USC, § 1325—Fraudulent entry of alien into United States;
18 USC, § 1001—False statements;
18 USC, § 1542—False statements in application for passport, etc.;
18 USC, § 1546—Using an immigration visa procured by false claims, etc.;

Count 6—§ 1546—False statements in application for immigration visa, etc.;

As charged in said Counts 1 & 6 of indictment; and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of—Count 1— One (1) Year, Count 6—One (1) Year.

It Is Adjudged that said terms of imprisonment run Concurrently.

(Indictment—6 counts. Defendant not named in remaining counts.)

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ O. D. HAMLIN,
United States District Judge.

Examined by:

/s/ JAMES B. SCHNAKE,
Assistant U. S. Attorney.

The Court recommends commitment to: an institution to be designated by U. S. Attorney General.

C. W. CALBREATH,
Clerk;

[Endorsed]: Filed July 30, 1956.

United States District Court for the Northern District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 19th day of July, in the year of our Lord one thousand nine hundred and fifty-six.

Present: the Honorable Oliver D. Hamlin,
District Judge.

[Title of Cause.]

ORDER DENYING MOTIONS FOR JUDGMENT NOTWITHSTANDING VERDICT OR, IN THE ALTERNATIVE, A NEW TRIAL

This case came on regularly this day for hearing of motions for a judgment notwithstanding the verdict or, in the alternative, a new trial. James B. Schnake, Esq., Assistant United States Attorney, was present on behalf of the United States. Defendant Chin Bick Wah was present on bond and with her attorney, James Davis, Esq. After hearing counsel, Ordered that said motions for judgment notwithstanding verdict or, in the alternative, a new trial be Denied.

Defendant was remanded into the custody of the United States Marshal.

Ordered case continued to July 27, 1956, for pronouncing of judgment.

[Title of District Court and Cause.]

ORDER

It appearing to the satisfaction of the Court, that under the provisions of Rule 42(a)(2) of the Federal Rules of Criminal Procedure, since I am not the trial judge, I have no power to entertain the application for bail on appeal for defendant Chin

Bick Wah and therefore I refuse to entertain it on that ground.

Dated: August 14th, 1956.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed August 14, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Chin Bick Wah, 889 Rosemont Road, Oakland, California.

Name and address of appellant's attorney: James T. Davis, Grant Bldg., 1095 Market Street, San Francisco 3, California.

Offense: 18 U.S.C. 371 and 18 U.S.C. 1546; Conspiracy, false statement in application for immigration visa.

Concise statement of judgment or order, giving date, and any sentence:

Judgment of conviction on July 17, 1956; denial of Motion for New Trial on July 19, 1956, and sentence of one year on July 27, 1956.

Name of institution where now confined, if not on bail: San Francisco County Jail No. 1, Dunbar and Washington.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated: July 27, 1956.

/s/ JAMES T. DAVIS,
Attorney for Appellant.

[Endorsed]: Filed July 27, 1956.

In the District Court of the United States for the Northern District of California, Southern Division

No. 35,037

Before: Hon O. D. Hamlin, Judge.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

FONG WY SUM, CHIN BICK WAH, and ROBERT LEONARD LEVY,
Defendants.

REPORTER'S TRANSCRIPT

Monday, July 9, 1956

Appearances:

For the Plaintiff:
LLOYD H. BURKE,
U. S. Attorney, by
JAMES B. SCHNAKE, ESQ.,
Assistant U. S. Attorney, and
MARVIN B. MORGANSTEIN, ESQ.,
Assistant U. S. Attorney.

For the Defendants Fong Wy Sum and Chin Bick Wah:

JAMES T. DAVIS, ESQ.

For the Defendant Robert Leonard Levy:

JAMES E. BURNS, ESQ.

Monday, July 9, 1956

A jury having been empaneled and sworn, including two alternate jurors, the following proceedings were had.

(Whereupon opening statements were made by Mr. Schnake on behalf of the Government and by Mr. Burns on behalf of Robert Leonard Levy.)

Mr. Davis: If the Court please, may I reserve my opening statement?

The Court: Yes. Call your first witness.

Mr. Schnake: Mr. Jonathan K. Yee.

JONATHAN K. YEE

a witness called by the Government. Sworn.

The Court: State your name, please.

The Witness: Jonathan Yee.

The Court: Keep your voice up so the jury may hear you.

Direct Examination

By Mr. Schnake:

Q. Mr. Yee, where do you live?

A. I live at 218 Hale Street, San Francisco.

(Testimony of Jonathan K. Yee.)

Q. By what other names are you known besides Jonathan Yee?

A. Well, my true name, Yee Kee.

Q. Yee Kee? [1*]

A. Yes, K double E.

Q. Under what name did you enter the United States? A. Yee Yuen Foon.

Q. That is spelled Y-u-e-n F-o-o-n?

A. Yes, sir.

The Court: Mr. Schnake, by reason of these names being somewhat unfamiliar to the jurors, I know, it might be advisable as the names are given you put them on the board.

Mr. Schnake: Yes, your Honor, I will be very happy to.

The Court: As well as the pronunciation.

Mr. Schnake: All right.

Q. (By Mr. Schnake): Mr. Yee, what is your full name as it was given to you when you were born? A. Yee Hall Kee.

Q. Where were you born, Mr. Yee?

A. I born in Canton, China.

Q. What was your father's name?

A. Yee Nging.

Q. Was your father born in China or the United States? A. My father was born in China.

Q. As far as you know did he ever at any time reside in the United States? A. No, sir.

Q. Was your mother born in the United States?

A. No, sir. [2]

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Jonathan K. Yee.)

Q. Did she ever reside in the United States, as far as you know? A. No, sir.

Q. All right. I will show you, Mr. Yee, a photograph of a male and ask you is that a picture of your father? A. Yes; it's my father.

Q. Is that a picture you have kept at your home over the years of your father? A. Yes, sir.

Mr. Schnake: I will ask this picture be introduced in evidence, your Honor.

The Court: Exhibit No. 1.

(Thereupon, the foregoing photograph was marked and introduced into evidence as Government's Exhibit No. 1.)

Q. (By Mr. Schnake): I will show you a picture of a Chinese female and ask you is that a picture of your mother?

A. Yes, sir; that's my mother.

Q. Have you also kept that picture at your home? A. Yes, sir.

Q. In the lower right hand corner of that frame, whose picture is that?

A. That is my younger brother.

Q. Your younger brother? A Yes, sir.

Q. All right. [3]

Mr. Schnake: I will ask that this picture of Jonathan Yee's mother be introduced in evidence as Exhibit No. 2.

The Court: It may be so admitted.

(Thereupon, the foregoing photograph was marked and introduced into evidence as Government's Exhibit No. 2.)

(Testimony of Jonathan K. Yee.)

Q. (By Mr. Schnake): Now, in 1939, were you living in Hong Kong? A. Yes, sir.

Q. Can you tell me whether or not you are related in any way to the defendant, Fong Wy Sum, here? A. Yes, sir; he is my first cousin.

Q. What relation is his mother to your father?

A. His mother and my father are brother and sister.

Q. So that his mother, Yee Shee, is the sister of your father, Yee Nging; is that right?

A. Yes, sir.

Q. Now, when you were in Hong Kong, in 1939, did you receive letters from Fong Wy Sum and his mother, Yee Shee? A. Yes, sir.

Q. Can you tell me what subject those letters were concerned with?

Mr. Burns: On behalf of Levy, I am going to object to any conversations or documents in 1939, if your Honor please, not within the framework of this indictment so far as that defendant is concerned. [4]

Mr. Schnake: It has a two-fold purpose, your Honor, as to why it is admissible. First of all, to establish the fact that he is not a citizen of the United States, that he did enter the country illegally, which makes the passport application itself a false and fraudulent document, and the indictment alleges and the evidence will show that the conspiracy was concerned with the passport application as well as the visa papers and that the defendant, Levy, was a co-conspirator.

(Testimony of Jonathan K. Yee.)

Therefore, this evidence establishing the actual fact of the illegal entry and the lack of citizenship of Jonathan Yee is admissible for that reason.

Secondly, we feel it is admissible in this trial and as against the defendant, Levy, for the reason that it shows the circumstances under which this defendant was induced to enter into the conspiracy and the matters that were discussed in the presence of the defendant, Levy, as to why this conspirator owed Fong Wy ~~Sum~~ the favor of bringing the woman over.

The Court: Well, unless the evidence is connected up with the defendant, Levy, it may be stricken. At the moment I can't tell whether it will or will not be. It may be admitted subject to a motion to strike, counsel, if it isn't connected up with the defendant, Levy.

Mr. Burns: I will continue to make that objection to any evidence that remote if it is sought to be introduced against Levy. [5]

Q. (By Mr. Schnake): Will you tell the subject of those letters from Fong Wy Sum and Yee Shee?

A. Well, at the time when they write to me in Hong Kong they mostly tell me, you know, they buy a paper for me to come over, the paper which is a native son of the citizen of the United States.

Mr. Davis: If the Court please, I object at this time, the proper foundation has not been laid for this testimony.

(Testimony of Jonathan K. Yee.)

The Court: As to the letters?

Mr. Davis: As to the letters.

The Court: I think there should be more foundation laid, counsel.

Q. (By Mr. Schnake): Are those letters in existence at the present time? Do you still have those letters, Mr. Yee?

A. No, sir; I haven't got them any more.

Q. Now, Mr. Yee, did they say in these letters——

Mr. Davis: I object again, your Honor, they are just talking about vaguely "They" sent letters. If there were letters sent there should be some better foundation as to who they were from and what was the approximate date.

The Court: I think that's right, counsel.

Q. (By Mr. Schnake): Mr. Yee, can you recall specifically as to whether the letters were signed, or rather were sent separately by William Fong and his mother, or by the two of them [6] together?

Mr. Davis: I will object again, this time he is leading.

The Court: I will permit this answer.

A. The letters sent me separately.

Q. (By Mr. Schnake): Separate letters from Fong and his mother? A. Yes, sir.

Q. All right. Taking specifically letters you received in 1939 from William Fong, did he say anything in those letters about any coaching material?

(Testimony of Jonathan K. Yee.)

Mr. Burns: I am going to object to that on two grounds; first one I have already mentioned as to the defendant, Levy, if your Honor please, and your Honor's inclination to permit the question to be answered, to say that it is entirely leading and suggestive.

The Court: It is leading and suggestive, counsel. As difficult as it may be I am going to ask you to avoid leading questions.

Mr. Schnake: All right, your Honor.

Q. Can you tell me what was in the letters from William Fong that you received in 1939, just prior to your coming to the United States?

A. Well, in those letters they tell me he, William Fong tell me, he put a paper for me, which is the paper for me to come over, you know, as the son of a citizen of the United States, for me to come over, and also mention in the letter that there [7] is some coaching book and for me to read it—I mean, to enter the United States as the son of a citizen of the United States.

Q. In any of those letters from William Fong, what, if anything, did he say about where to go?

Mr. Davis: I will object, your Honor. On the first ground, so far he is only talking about one letter from William Fong.

The Court: That's right. You are going to have to particularize your questions, counsel.

Mr. Schnake: All right.

Q. In the letter from William Fong that you

(Testimony of Jonathan K. Yee.)

have described, what if anything was said about where you should go?

A. Yes; it goes to the village of my paper father, Yee Hing Bow.

Q. Yee Hing Bow? A. Yes.

Mr. Schnake: All right, let's write that on the bulletin board.

Q. Did you go to another village in China?

A. Yes.

Q. What did you do there at the village?

A. Well, I went to the village and counted houses in the village, and so many houses there—well, the houses and the general—I mean—— [8]

Q. Did you study what was in the houses?

A. Well, most of the village, so many houses and where the house located and everything.

Q. And when you presented yourself to the United States were you questioned by the Immigration regarding these various matters?

A. Yes, sir.

Mr. Burns: I object to that, assuming something not in evidence, your Honor. We have this boy in 1939 in some village in China. Certainly I don't know how that could bind, his activities there, could bind the defendant, Levy, and then he comes out with "Did you speak on your entry into the United States," and there is no evidence he came to the United States, so far.

The Court: Well, I assume that is preliminary, that it will be covered. He is here now, and he must have gotten here some way, counsel.

(Testimony of Jonathan K. Yee.)

Mr. Burns: That is correct.

Q. (By Mr. Schnake): Did you study the book that you have referred to, the coaching material?

A. Yes, sir.

Q. What did you do with that book?

A. I destroyed it before I get to Honolulu.

Q. Did you receive a letter from William Fong regarding what to do with the book? [9]

A. No, sir, not that letter from William Fong.

Mr. Davis: Counsel is obviously leading the witness; the questions are all leading and suggestive.

Mr. Schnake: The answer is only no.

The Court: We are going to have trouble, Mr. Schnake, unless you avoid leading questions.

Mr. Schnake: All right, I will rephrase the questions, your Honor.

Q. Did you receive a letter from anybody regarding the coaching book? A. Yes, sir.

Q. From whom?

A. From my paper father.

Q. From your paper father? A. Yes.

Q. Whom do you mean by that?

A. Yee Hing Bow, the last one there.

Q. Now did you present yourself to the Immigration officials here in San Francisco for entry into the United States? A. I don't quite——

Q. Were you questioned by the Immigration officers here in San Francisco when you got to the United States? A. Yes, sir.

Q. At that time did Yee Hing Bow appear at the Immigration office? [10] A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. As far as you know was he questioned regarding your status and right to come into the United States? A. Yes, sir.

Q. Now, was the person who you saw and who represented himself as Yee Hing Bow, was he your father? A. No, sir.

Q. As a matter of fact, had you ever seen that person before in your life? A. No, sir.

Q. Is he related to you in any way?

A. No, sir.

Q. After you arrived in San Francisco in 1939, did you see William Fong? A. Yes, sir.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. Now, can you state when you first saw William Fong in 1939 and who else was present, if anyone? A. Yes, sir.

Q. Who?

A. William Fong's mother, which is my aunt.

Q. Your aunt, Yee Shee? A. Yes, sir.

Q. Can you tell me what, if anything, was said at that conversation [11] with William Fong and his mother, Yee Shee?

Mr. Davis: I object on the ground that the proper foundation has not been laid for the conversation.

Mr. Burns: On that ground, and likewise on the ground heretofore mentioned on behalf of the defendant Levy we object to any conversation by this witness in 1939.

The Court: In reference to the defendant Levy,

(Testimony of Jonathan K. Yee.)

that testimony will be admitted, as I stated, counsel, subject to motion to strike if the evidence doesn't justify the connection of the defendant Levy in the conspiracy.

Mr. Burns: For the persons in the jury, if your Honor please, who have not had previous criminal experience, I wonder if your Honor would make that clear with reference to that matter.

The Court: After a conspiracy has been shown to exist, and it may be shown by testimony of any kind, the statements and acts and conduct of all persons in the conspiracy may be admitted as against all of the members of the conspiracy.

When testimony is admitted subject to a motion to strike, it means that unless that defendant is connected up in some way with and in a sufficiently legal way, that the counsel for that defendant may later move the Court to strike all of that testimony from the record, and when it is so stricken you will be then instructed and it will be your duty to disregard it entirely from your consideration. [12]

Mr. Burns: Thank you.

The Court: All right.

Q. (By Mr. Schnake): Would you answer the question regarding conversation with William Fong and his mother, Yee Shee?

Mr. Davis: I believe the Court hasn't ruled on my objection.

Mr. Schnake: I am sorry.

The Court: I don't recall it now, Mr. Davis, that there was no foundation laid?

(Testimony of Jonathan K. Yee.)

Mr. Davis: No foundation.

The Court: And so that we may avoid these, Mr. Schnake, counsel is entitled to have a foundation laid for conversations and will you please do that originally so that we won't be subject to the objection.

Q. (By Mr. Schnake): Mr. Yee, can you state where that conversation took place?

A. It is at 935—no, wait a minute. 915 Stockton Street.

Q. 915 Stockton Street, San Francisco?

A. Yes, sir.

Q. Was anybody else besides William Fong and his mother present that you know of at this time?

A. Yes, sir, I recall, I think Ruby——

Q. Ruby who?

A. Yee. Now she is Mr. William Fong's sister.

Q. She is William Fong's sister? [13]

A. Yes.

Q. All right.

A. And then maybe Ben Fong.

Q. Benton Fong? A. Yes.

Q. Who is he?

A. He is Mr. Fong's brother.

Mr. Burns: Pardon me, did I understand he said maybe Benton Fong?

Mr. Schnake: Maybe Benton Fong, yes.

The Witness: Maybe somebody else, I can't remember who was there, at home was Yee Shee, live 915 Stockton Street.

(Testimony of Jonathan K. Yee.)

Q. (By Mr. Schnake): At that time Yee Shee lived at 915 Stockton Street? A. Yes, sir.

Q. Now, will you state what the conversation was?

Mr. Burns: The objection goes to the content of the conversation.

The Witness: Well, I remember Mr. Fong and Yee Shee mentioned it, and he bought a paper for me and then they spent about $2,000.00 for the whole thing to put me over. We pay him $2,000.00.

Q. During the period from 1939 up to the time you went in the service—first of all, tell me when that was approximately that you went into the service?

A. I volunteered for the Army in May, 1944. [14]

Q. May, 1944. Now between 1939 when you entered and May of 1944, did you repay to William Fong any money? A. Yes, sir, I did.

Q. How much?

A. Well, I think it is more than $2,000.00 I pay him back, because at that time when I was working at the school, school job, and Mr. Fong get me the job working in a restaurant I get $25.00 a month, and then every month when I get paid it was in a little small envelope, all the money was and I turned the whole thing over to Mr. Fong's mother, Yee Shee, except that she give me maybe a dollar or so for spending money. All the rest of the money give to Mr. Fong.

Q. Did you work at various jobs in that period of time? A. Not very long, sir.

(Testimony of Jonathan K. Yee.)

Q. Did you work at different jobs during that period of time? A. Yes, sir.

Q. What did you do, if anything, with the money from those jobs, for the wages you received?

A. Well, mostly I turned it over to my aunt, Mr. Fong's mother Yee Shee.

Q. As a matter of fact did you for a time prior to going into the service work for William Fong?

A. Yes, I work for Mr. Fong for quite some time.

Q. Did you receive the full wages for that job? [15] A. No, sir.

Q. Now, did you ever have a conversation with Yee Shee regarding a record of the payments of money to William Fong?

A. Well, Mr. Fong——

Q. First answer yes or no, I want to get it established. Did you have such a conversation?

A. Yes, sir.

Q. Now, you recall about when that was?

Mr. Davis: I object to this question, your Honor, as assuming something not in evidence. As I understand the evidence, he said he paid the money to Yee Shee.

Mr. Schnake: My question was: Was there a record of payment to William Fong kept by Yee Shee?

The Court: He may answer.

Mr. Schnake: I think he already answered the question, yes, your Honor.

Q. Can you tell me, Mr. Yee, about when that

(Testimony of Jonathan K. Yee.)

was that you had the conversation, approximately when? A It was after the war.

Q. After you returned from the service?

A. Yes, sir.

Q. About what year would that be?

A. It was in 1946.

Q. Where did you have that conversation with Yee Shee?

A. At Yee Shee's apartment at 1041 Washington Street. [16]

Q. Was anyone else present that you know of?

A. I don't remember anybody was there or not, but I know my aunt, Yee Shee, was there.

Q. What if anything did she say about a record?

Mr. Burns: Same objection on behalf of defendant Levy.

The Court: Objection overruled.

The Witness: Well, during that time Mr. Fong, he goes out and tell everybody he put me over.

Mr. Davis: I object to that, your Honor, as being not responsive to the question.

Mr. Schnake: The question may go out.

The Court: It may go out.

Q. (By Mr. Schnake): Did you say that to her at that conversation? A. Yes, sir.

Q. All right. Say what you said to her and then tell us what she said. Would you repeat just what she said and explain what you said to her.

A. I tell my aunt, Mr. Fong's mother and I tell her, said, Bill, Mr. Fong goes out and tells everybody I owe him the money for which he brought

(Testimony of Jonathan K. Yee.)

me over, I haven't paid him back yet. He tell everybody. So I ask Yee Shee and try to show me the book when I pay him back and how much and so forth.

Q. Did she show you anything?

A. Yes, she did and she kept a book of her own writing, and [17] she can't write in Chinese, that was her own writing, just she the only one know what it means.

Q. What if anything did she say about that book?

A. Well, she told me and then I already pay him back more than enough.

Q. I see. Now Mr. Yee, did you work for William Fong after you came back from service?

A. Yes, sir.

Q. Did you work for him from 1946 up to 1951, approximately?

A. I work for him from 1946 until 1950, I think 1950.

Q. Do you recall in January of 1949, when William Fong's wife was in the hospital?

A. Yes.

Q. You recall that time. Now at the time that his wife, Gee King Yip, was in the hospital, did William Fong have a conversation with you regarding a woman coming over to the United States?

A. Yes, sir.

Q. All right. Now can you tell me any closer in time as to when that was, other than the first part of 1949?

(Testimony of Jonathan K. Yee.)

A. Well, we discussed that matter in 1949, 1950.

Q. First let's stick with the conversation in 1949. Can you tell me, was it a short time after his wife went in the hospital? A. Yes, sir. [18]

Q. All right. As a matter of fact, did she break her leg and go in the hospital on New Year's Day, 1949? A. New Year's Day, 1949.

Q. Who else was present at that conversation?

A. Myself, Mr. Fong, perhaps Mr. Levy.

Mr. Burns: I am going to move to strike that "perhaps Mr. Levy," your Honor.

Mr. Schnake: Your Honor, that's his best recollection.

The Court: Let's find out where the conversation was.

Q. (By Mr. Schnake): Where was the conversation? A. It is at 935 Stockton Street.

Q. What is 935 Stockton Street?

A. Fong Brothers, Mr. Fong's milk store.

Q. Fong Brother's Dairy Store?

A. Yes, sir.

Q. You say perhaps Mr. Levy. Had you seen Mr. Levy at the store on previous occasions there?

A. Yes, sir.

Q. Do you have any clear recollection one way or the other as to whether Mr. Levy was present at this particular conversation?

A. Maybe not the first conversation, but some of the conversations, he was in it.

Q. All right. This first conversation where you know that Mr. Fong, yourself and your wife were

(Testimony of Jonathan K. Yee.)

there, what did Mr. Fong [19] say, if anything, about bringing somebody over to the United States?

A. Mr. Fong mention it, try to bring Chin Bick Wah, the woman here.

Q. Chin Bick Wah? All right.

Mr. Burns: May the record show that we are making the same objection to this conversation as heretofore made, your Honor?

The Court: Yes, it may.

Q. (By Mr. Schnake): Would you go on with the conversation regarding Chin Bick Wah at this time? What did he say?

A. Well, he mention it, and he try to bring her over as his wife number two.

Q. Did he say anything as to how he would bring her over? A. Yes.

Q. How?

A. He would try to bring her over as a student nurse, and also try to bring her over as the daughter of some citizen of the United States.

Q. As the daughter of some citizen of the United States? A. Some citizen of the United States.

Q. Did he say whether or not he had been successful? A. Yes.

Q. What did he say?

A. He said, well, and he fail. [20]

Q. He failed. Did he show you any photographs at that time? A. Yes, sir, he did.

Q. Whom were those photographs?

A. Chin Bick Wah.

Q. When you say Chin Bick Wah will you state

(Testimony of Jonathan K. Yee.)

whom in this courtroom you are referring to?

A. That woman who sits in the corner.

Q. The defendant Chin Bick Wah?

A. Yes.

Q. All right. Did he say where he had received those photographs?

A. He told me she send it to him from Hong Kong.

Q. Did he say how he had met Chin Bick Wah?

A. Yes.

Q. How?

A. And then Mr. Fong met Chin Bick Wah through Mr. Fong's first cousin in China.

Q. Were they introduced in person, in the mail, or some other method? A. Through the mail.

Q. Now, at the time he talked with you what, if anything, did he say about any conversations he had had with Gee King Yip, his first wife?

A. I remember he talk it over with Gee King Yip, and then bring her over so she could bear him a son. [21]

Q. So who could bear him a son?

A. Mr. Fong, bear Mr. Fong—so she could bear Mr. Fong a son.

Q. So who could bear Mr. Fong a son?

A. Chin Bick Wah.

Q. I see. Did he say that he had said that to his wife, Gee King Yip? A. Yes.

Q. Now, did he give any other reason as to why he would want Chin Bick Wah to come over to the United States?

(Testimony of Jonathan K. Yee.)

A. Well, so Mr. Fong can have a son by Chin Bick Wah to carry on his name.

Q. I see. And during 1949 did you have any other conversations on this same subject with William Fong? A. Yes, sir.

Q. And where were those conversations?

A. Mostly take place in Mr. Fong's store at 935 Stockton Street.

Q. Who else, if anyone, was present at those conversations?

A. Sometimes my wife, Jean, was there, sometime Mr. Levy was there.

Q. I see. When you say Mr. Levy would you point out in the courtroom who you mean?

A. That is Mr. Levy sitting next to Mr. Fong.

Mr. Schnake: May the record show that he has indicated [22] Mr. Levy.

Mr. Burns: May we have the time fixed as to the first of these purported conversations, your Honor?

Mr. Schnake: All right.

Q. Mr. Yee, can you tell me when it was in 1949 that there was the first conversation at which Mr. Levy was present, if you can recall?

A. No, sir, I can't recall he was there or not, not on the first——

Q. I am not asking you about the first conversation you had, but I am asking you: Can you tell me when in 1949 was the first time Mr. Levy was present at one of these conversations?

A. I can't tell you when the exact date, I think it was in——

(Testimony of Jonathan K. Yee.)

Q. Can you tell us the season of the year in 1949? A. The first part of the year of 1951.

Q. Of what? A. Of 1949.

Q. I see. Now, in 1950, in the latter part of 1950, do you recall a particular conversation with Mr. Fong, William Fong, about your giving him any help in bringing somebody into the United States?

A. Well, Mr. Fong.

Q. First of all, answer that yes or no. Do you have a recollection of a particular conversation with Fong? A. Yes, sir. [23]

Q. Was that conversation just between you and Fong? A. Yes, sir.

Q. Where was that?

A. It was in Mr. Fong's store.

Q. At 935 Stockton? A. Yes, sir.

Q. Now, other than the fact that it was the last part of 1950, can you give any better designation of the time, or is that your best recollection?

A. I think—I can't tell you the exact date, sir.

Q. Now in this conversation would you tell us what Mr. Fong said, if anything, about your helping him bring someone into this country?

The Court: Who was present at this conversation?

Mr. Schnake: He has already stated, your Honor, just himself——

The Court: No one but Fong?

The Witness: Yes, sir.

Mr. Burns: May the record show an objection

(Testimony of Jonathan K. Yee.)

on behalf of the defendant Levy to this conversation?

The Court: All right.

The Witness: Mr. Fong asked me to divorce my wife, Jean, so I can go back there and marry Chin Bick Wah to bring her over as Mr. Fong's wife number two.

Q. (By Mr. Schnake): Did he say anything in that conversation [24] about the expenses of doing that? A. Yes, he did.

Q. What did he say?

A. He said he would pay all the expenses and then for me to go back there.

Q. Now in this conversation did he say anything at all regarding any reason for you doing this for him?

Mr. Davis: If the Court please, I don't like to be objecting all the time, but it is leading and suggestive.

The Court: It is leading, counsel, and we are not to have leading questions; now, Mr. Schnake, let's not have that any more, please.

Mr. Schnake: All right.

Q. Can you tell me what else was said in this conversation? A. Yes.

Q. Well, what?

A. Well, he always tells everybody, and then he put me over I should do a favor for him, as a favor for a favor.

Q. Favor for a favor? A. Yes.

(Testimony of Jonathan K. Yee.)

Q. Did he make that statement in this conversation? A. Yes, sir.

Q. Now, did he give any other reason?

A. Yes. [25]

Q. What?

A. Well, he also mention it, and then he receive a letter in Hong Kong—from Hong Kong, my mother was there and my brother was there, so he wants me to go back there and marry Chin Bick Wah and bring her over, and also visit my mother.

Q. I see. Now, what if anything did you tell him at that time as to whether you would do this?

A. I told him I wouldn't do it, I'd have to talk it over with my wife, Jean.

Q. Did you tell your wife, Jean, about that?

A. Yes.

Q. Did she agree to do that? A. No, sir.

Q. Now, shortly after that did you have a conversation with Mr. Fong regarding this same subject? A. Yes.

Q. And who else was present at this next conversation that you can recall?

A. Mr. Fong and myself, Mr. Levy, my wife, Jean, was there.

Mr. Burns: May we have the time fixed, your Honor?

Mr. Schnake: Just going to get to that.

Q. Can you tell me when that was in relation to the last conversation that you just described?

A. Just before I went back to Hong Kong. It was in the middle part of 1960, in the summer. [26]

(Testimony of Jonathan K. Yee.)

Q. Was this prior to the time you went to Reno?

A. It was, let's see. No, it was the first part of 1950.

Q. It was the first part of 1950 rather than the middle? A. Yes, sir.

Q. Now was it before you went to Reno, Nevada? A. Yes, sir.

Q. Do you know when you went to Reno?

A. I think it was in—I can't remember, first part in 1950, about; I can't remember.

Q. Can't remember the exact date, all right. Now at this conversation can you tell me what was said by all the persons who were at the conversation?

Mr. Burns: Could we have the place fixed?

Mr. Schnake: Already testified to, I believe.

The Court: I don't know.

Q. (By Mr. Schnake): What was the place where the conversation took place?

A. It was at Mr. Fong's store, 935 Stockton Street.

Q. Incidentally, what time of day did this and the other conversations take place?

A. Mostly take place in the evening after Mr. Fong's wife and Gee King Yip, she went home, and we talked things over when she wasn't there.

Q. It was after dinner?

A. After the dinner, about eight or nine o'clock. [27]

Q. At this first conversation to which you have testified Mr. Levy was actually present, would you

(Testimony of Jonathan K. Yee.)

tell us what Mr. Fong said, if anything, regarding this same subject you testified to?

A. I don't quite get it, sir.

Q. Well, what did Fong say about this subject of bringing a woman over, if anything?

A. Well, then, Jean mentioned something when we do something which was against the law, fooling around with the Federal Government, she says she wouldn't dare try to do anything like that.

The Court: Who said that?

The Witness: My wife, Jean.

Mr. Davis: I object to that and ask that it go out as not responsive to the question.

The Court: I think he is intending to say that was all said at the conversation; if it was, it may remain. Was that said in the same conversation when all these people that you named were present?

The Witness: Yes, sir.

The Court: All right.

Q. (By Mr. Schnake): What, if anything, did Fong say about the particular question of bringing a woman over?

A. Well, Mr. Fong said, well, it is for me to go up to Reno and get a divorce, and then he will pay all the expenses and [28] everything, and then after I get a divorce he will fix it up for me to go back to China to bring that woman Chin Bick Wah over.

Q. You have testified as to what your wife said regarding it. When your wife made that statement did Mr. Levy make any statement? A. Yes.

Q. What did he say?

(Testimony of Jonathan K. Yee.)

A. Well, then, when my wife, Jean, when she mention it it was against the law, I mean, fooling around with the Federal Government, it is not right, so Mr. Levy said, well, if we all keep quiet, nothing would happen.

Q. Did he say anything about what would happen if it ever leaked out? A. Yes.

Q. What?

A. Mr. Levy mention it, well, if anything happened and he would lose his license, maybe get fined, get jail sentence, things like that.

Q. Was there anything said at that conversation regarding getting these divorces you have mentioned as to how they would be secured? A. Yes.

Q. What was said? A. Well—— [29]

Q. And who said it?

A. Mr. Levy, he said he know somebody in Reno, so he can write a letter, recommendation letter for me to take it up there to that lawyer so the lawyer can handle my divorce case for me.

Q. In this conversation was anything said as to why Mr. Fong wanted to bring a woman from China? A. Yes.

Q. What was said?

A. He wanted to bring her over and then for his number two wife, for Mr. Fong's number two wife.

Q. Now during the next several months after that conversation, did you have any other conversations at the same place regarding that same subject? A. Yes, sir.

Q. Who else was present at those conversations?

(Testimony of Jonathan K. Yee.)

Mr. Davis: I suggest, your Honor, that we limit it to one conversation at a time.

Mr. Schnake: I am not attempting to bring in the entire conversations at these particular meetings, your Honor, just show the number and duration of each of them.

Mr. Burns: Notwithstanding what Mr. Schnake's desires are, we have a right, if there are conversations, to have the proper foundation laid.

The Court: That's right, any conversations you will have [30] to fix the time, place and persons present and what was said.

Mr. Schnake: All right.

Q. Do you recall any other conversations regarding this same subject at which Mr. Levy was present? A. Yes.

Q. Well, first of all, how many such conversations prior to your going to Reno were there where Mr. Levy was present?

A. Well, I would say about several, you know.

Q. Several, did you say? A. Yes, sir.

Q. About how often were there such conversations? A. Once every two weeks.

Q. Do you recall any other particular conversations at which Mr. Levy was present in this period of time?

Mr. Burns: I am going to object, if your Honor please.

Mr. Schnake: I am trying to get a particular conversation.

Mr. Burns: I don't believe, with his Honor's

(Testimony of Jonathan K. Yee.)

ruling, as the witness testified there were several others, every two weeks——

Mr. Schnake: That is preliminary.

Mr. Burns: I think we should have them come in their sequence and order that they happened, if they did.

Mr. Schnake: Well, if your Honor please——

The Court: All right, now, don't argue, Mr. Schnake. [31]

Mr. Schnake: All right.

The Court: Proceed and get the conversations that you desire to introduce on that subject, but don't characterize them as being the same conversations. You will have to show what was said at each conversation.

Q. (By Mr. Schnake): After this first conversation at which Mr. Levy was present, did you have another conversation with him at which he was present? A. Yes.

Q. About how long after the first one was that?

A. Oh, I would say about couple of weeks later.

Q. Where was that?

A. At Mr. Fong's store.

Q. Who else was present?

A. Mr. Levy, Mr. Fong and myself.

Q. All right. What if anything was said regarding this same subject?

A. Well, the same thing, about getting a divorce and try to bring that woman, Chin Bick Wah, over.

Q. Who said that? A. Mr. Fong.

Q. Was anything said at that conversation re-

(Testimony of Jonathan K. Yee.)

garding the amount of any attorney's fees for the divorces?

Mr. Burns: I am going to object to that as being leading and suggestive, if your Honor please. Mr. Schnake knows that [32] when he asks a witness what a conversation was he should have it—doesn't need to lead him.

Mr. Schnake: Your Honor, the cases hold a subject can be mentioned rather than to go through an entire conversation which may have a mass of irrelevant material, it is proper to suggest in the question as to what topic or what subject was discussed.

The Court: You may answer.

Mr. Burns: We can discuss that question in the absence of the jury.

The Witness: Yes. And then Mr. Fong did mention it.

Q. (By Mr. Schnake): What did he say?

A. He said about four or five hundred dollars for the lawyer in Reno.

Q. All right, did anybody——

The Court: Who said that?

The Witness: Mr. Fong.

Q. (By Mr. Schnake): What if anything was said as to who would pay that?

A. Mr. Fong would pay that.

Q. Who said that? A. Mr. Fong.

Q. Now, just prior to the time that you went to Reno, do you recall a particular conversation with Mr. Levy at the milk store? [33] A. Yes.

(Testimony of Jonathan K. Yee.)

Q. Who was present at that conversation?

A. Mr. Fong, Mr. Levy and myself; maybe my wife, Jean, was there, but I don't remember.

Q. You are not sure as to whether your wife, Jean, was there.

Now, at that conversation was anything said as to anything Mr. Levy would do for you?

A. Well, Mr. Levy would write a letter for me to bring up there.

Q. Did he say that or did someone else say that?

A. Mr. Levy say that, because he knows a lawyer in Reno.

Q. Did Mr. Levy write such a letter?

A. Yes.

Q. What did he do with it?

A. Well, I think he type it and type it out and then he brought it up to the store and gave it to me.

Q. Gave it to you at the store?

A. Yes, at Mr. Fong's store.

Q. At the time he gave that to you at the store who else was present?

A. Mr. Fong, Mr. Levy and myself, and then I think that's the best of my knowledge.

Q. Do you recall prior to your going to Reno a particular conversation at which your wife was present?

A. Well, one of the conversations she was there. [34]

Q. All right. Now this conversation at which your wife was there, can you tell us who else was

(Testimony of Jonathan K. Yee.)

present, and I am referring to the period of time just before going to Reno.

A. Mr. Fong, Mr. Levy, myself, I think Jean was there too, my wife——

The Court: A little louder.

The Witness (Continuing): and myself, Gee, I think she was there.

Q. (By Mr. Schnake): Can you recall your wife saying anything in that conversation regarding whether she would agree to your going to Reno?

The Court: That is leading and may be sustained.

Mr. Schnake: All right.

Q. Can you tell us anything that your wife said at that conversation?

A. Well, all along she wouldn't agree to it.

Q. Did she say that at that conversation?

A. Yes, even before I go up to Reno she still doesn't want me to go through with it.

Q. And then what did she say at this conversation regarding that?

A. Well, she still mention it, still do things against the law, I mean, fooling around with the Federal Government.

Q. At this last conversation which you can recall, she was present before you went to Reno, what then did she say on this subject? [35]

Mr. Burns: I submit, your Honor, the question has been asked and answered.

(Testimony of Jonathan K. Yee.)

The Court: No, I don't believe so. He may answer.

Q. (By Mr. Schnake): What else did she say then, at this last conversation?

A. I mention it and she wouldn't go to Reno with me.

Q. Excuse me, I didn't hear that.

A. She said she didn't go to Reno with me.

Q. Would or would not?

A. Would not go to Reno with me on account she is working and then she said she didn't want to take any time off.

Q. Can you tell us anything else she said about this subject of whether she would agree?

A. Well, finally Mr. Wong talked to her again about going back and see my mother and visit my relatives in Hong Kong, and she finally agreed to do that.

Q. Did she say she agreed to do it in that conversation A. Yes, before I went to Reno.

Q. Now, at this conversation did William Fong say anything about why you should go to Hong Kong?

Mr. Burns: I submit that is leading and sugstive, if your Honor please.

The Court: Overruled.

The Witness: Well, Mr. Fong mention it, the fact I was in the Army and then it's easier for me to go back there to bring her over. [36]

Q. Did he say why it would be easier for you to go back? A. Why?

(Testimony of Jonathan K. Yee.)

Q. Why would it be easier?

A. Because I was in the Army, he said, in the war, and be easier for me to bring the wife over than Mr. Fong himself.

Q. Prior to your going to Reno do you have a particular recollection of the conversation with Mr. Fong regarding what he could do for your mother? Just answer that yes or no first. A. Yes.

Q. Now, can you recall about how long that was before you went to Reno?

A. Well, just before I went to Reno, I would say a couple of weeks before, or a week before, I can't remember the exact date.

Q. Where was that conversation?

A. Also in Mr. Fong's store.

Q. Do you recall who else was present besides yourself and Fong?

A. No, sir, I can't remember that time.

Q. What if anything did he say on that subject?

A. And then Mr. Fong mentioned, can try to get a paper for my mother to bring my mother over after I get a divorce and I go back there, bring that woman, Chin Bick Wah over, and also try to bring my mother over and then kill one bird with two stones—I mean, kill two birds with one stone. [37]

Q. Did he say how he could arrange to have your mother come over?

A. He said, try to get the paper, the paper that means some citizen's wife.

Q. That she would——

A. So she can come over as somebody's wife.

(Testimony of Jonathan K. Yee.)

Q. Somebody else's wife? A. Yes.

Q. Mr. Yee, I show you a letter purportedly signed by Robert Leonard Levy—as a matter of fact, I think we have a stipulation, do we, counsel, that that letter was signed by Mr. Levy?

Mr. Burns: That is correct. We will stipulate the whole file may go in evidence, to expedite it.

Mr. Schnake: All right.

Q. I will ask you, Mr. Yee, is this the letter that you took up to Reno? A. Yes, sir.

Q. So that your recollection is that you went to Reno about the time of the date on that letter?

A. I got the letter the night before, the night before I want up to Reno.

Q. So that you would have received the letter, and the following day you went to Reno?

A. Yes, sir. [38]

Q. All right.

Mr. Schnake: The Government offers this in evidence, the entire file of Yee versus Yee, being offered by stipulation.

The Court: It may be admitted and marked Exhibit 3.

(Thereupon the foregoing file of Yee vs. Yee was admitted in evidence and marked as Plaintiff's Exhibit No. 3.)

Q. (By Mr. Schnake): Now at the time you went to Reno, on or about April 12th, 1951, did Mr. Fong give you anything?

A. No, sir, not the first time.

(Testimony of Jonathan K. Yee.)

Q. Not the first time. Did he at any time give you any money for living expenses at Reno?

A. Yes, sir.

Q. About when was that in relation to your going to Reno?

A. After I went up to Reno and came back.

Q. Did you come back within a short period of time?

A. Yes, and then I came up—well, maybe stayed for a few days and then come back into San Francisco.

Q. When you came back did he give you any money?

A. He gave me some money for the expenses.

Q. About how much money was that for your expenses?

A. I think it was about $100.00 or so.

Q. Where did he give you that money?

A. At Mr. Fong's store

Q. Who was present when he gave it to you, if you can recall? [39]

A. I don't remember who was there, sir.

Q. All right. Approximately a week before you actually got the divorce decree did Mr. Fong give you anything? A. Yes.

Q. What did he give you?

A. He gave me about four or five hundred dollars to take it up there to pay the lawyer.

Q. Was that about four or five hundred dollars?

A. I can't remember correctly, I think about four or five hundred dollars.

(Testimony of Jonathan K. Yee.)

Q. In what form was that?

A. It was in cash.

Q. First of all, where did he give you that money? A. Also at Mr. Fong's store.

Q. Do you recall who else was present when he gave it to you? A. No, sir.

Q. Now, did he say what that was for when he gave it to you? A. Yes.

Q. What?

A. He said for the lawyer's fee, and also something; I think $50.00, for witness up there.

Q. $50.00 for the witness fee?

A. Yes, sir.

Q. Now, as a matter of fact, Mr. Fong did you live— [40] excuse me—Mr. Yee, did you live in Reno, Nevada, continuously for that six weeks before you got the divorce? A. No, sir.

Q. What did you do?

A. Well, I come here—I mean, I travelled back and forth.

Q. Travelled back and forth? A. Yes, sir.

Q. Where did you spend week ends?

A. At my home at 1544 Powell Street.

Q. With whom? A. With my wife, Jean.

Q. Did you have any children living there?

A. No, sir, my daughter was boarded out.

Q. Your daughter was boarded out, is that what you said? A. Yes, sir.

Q. Incidentally, when did you marry Jean Yee?

A. I marry her in September, 1947.

Q. All right. Did you pay the cash that Mr.

(Testimony of Jonathan K. Yee.)

Fong gave you to the attorney? A. Yes, sir.

Q. Did you pay the witness immediately after he had testified? A. Yes, sir.

Q. Did you appear in Reno in the court and testify in a divorce hearing? [41]

A. Yes, sir.

Q. Incidentally, Mr. Yee, during these week ends you spent here in San Francisco while waiting to get the divorce, did you see Mr. Fong at any time?

A. Yes, sir.

Q. How often did you see him?

A. Well, when I come back over a week end I always go down to the store.

Q. You always went down to the store?

A. Yes, sir.

Q. Ever see Mr. Levy down there?

A. Yes.

The Court: While you are looking at that we will take a recess at this time for ten minutes. Remember the admonition heretofore given you.

(Short recess.)

The Court: The jury is present; proceed.

Q. (By Mr. Schnake): Mr. Yee——

Mr. Burns: On behalf of defendant Levy, Mr. Schnake, I have no objection to your offering that in evidence.

Mr. Schnake: All right.

Mr. Davis: No objection on behalf of my clients.

Mr. Schnake: All right, without further identification then, we will offer in evidence certified

(Testimony of Jonathan K. Yee.)

copies of findings of fact and conclusions of law and transcript of testimony [42] in the divorce action, Jonathan Yee versus Jean Yee.

Mr. Burns: I think it also contains the decree.

Mr. Schnake: Yes, if I didn't say the decree I meant to.

The Court: The decree of divorce entered in Reno between Yee and Yee, is that right?

Mr. Burns: That is correct.

Mr. Schnake: And the transcript of testimony your Honor.

The Court: It may be marked Exhibit 4.

(Thereupon the foregoing transcript of testimony and divorce decree in the case of Yee vs. Yee was marked and entered in evidence as Plaintiff's Exhibit No. 4)

Q. (By Mr. Schnake): Mr. Yee, on May 11, 1951, did you secure this decree of divorce that has just been introduced in evidence? A. Yes, sir.

Q. Immediately after that divorce decree was secured did you come back to the Bay area?

A. Yes, sir.

Q. Where was that?

A. I stayed at 1544 Powell Street.

Q. With whom? A. With my wife, Jean.

Q. Where did you live continuously after that time up to your trip to Hong Kong?

A I live at the same place. [43]

Q. With her? A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. I'll show you the passport application of Yee Yuen Foon and ask you is that your signature on the passport application? A. Yes, sir.

Q. Is that William Fong's signature on the application as the identifying witness?

A. Yes, sir.

Q. Now, I believe we have a stipulation, counsel, that the passport application is signed by William Fong as identifying witness?

Mr. Davis: Yes.

Mr. Schnake: And that the passport file may be introduced in evidence, is that correct?

Mr. Burns: We object to it on behalf of Mr. Levy. We have no objection to its authenticity and stipulated Mr. Schnake would not have to call witnesses to identify it, but insofar as admissibility against Mr. Levy is concerned, we didn't stipulate to that.

The Court: It may be admitted subject to a motion to strike. It's a passport application?

Mr. Schnake: This is actually the passport application file of Jonathan Yee, but because it includes several documents, your Honor. [44]

The Court: All right, it may be marked Exhibit 5.

(Thereupon the foregoing passport application of Jonathan Yee was admitted in evidence and marked as plaintiff's Exhibit No. 5.)

Q. (By Mr. Schnake): Just prior to your signing that passport application did Fong have a conversation with you about it?

(Testimony of Jonathan K. Yee.)

A. I think he did, sir.

Q. Well first of all, do you recall where he talked with you about this passport application?

A. That would be—that was in his store.

Q. In his store? A. Yes, Mr. Fong's store.

Q. Was anyone else present?

A. I can't recall who was there, sir.

not, but I think it was the three of us.

Q. You think the three?

A. I can't recall who was there, sir.

Q. What did he say about this passport application?

Mr. Burns: May the record show on behalf of defendant Levy we object to this conversation?

The Court: It may be admitted, subject to the same motion, counsel.

Q. (By Mr. Schnake): Perhaps I can rephrase the question, if you don't understand what I am asking you, Mr. Yee.

Did Fong say anything to you about signing that passport [45] application?

A. Well, he did, but I can't remember what he said to me.

Q. Did you prepare the passport application?

A. No, sir

Q. Who did? A. Mr. Fong.

Q. Did he hand it to you then?

A. Well he was—prepared and handed me for me to sign it.

Q. Where did you and he sign that? To refresh your recollection I show you the State Department Clerk's signature on it.

A. I remember one time I went down to the State Department with him, but I can't remember I signed this application in Mr. Fong's store or down in the State Department. I think I went down to the State Department with him, he took me down there.

Q. I was going to ask you, why did you go down to the passport office? A. I beg pardon, sir?

Q. Who, if anyone, told you to go down to the passport office? A. Just Mr. Fong and I.

Q. On this passport application it states that you are a citizen of the United States. Were you at that time a citizen of the United States? [46]

A. No, sir.

Q. Did you know that you were not a citizen of the United States? A. Yes, sir.

Q. In this passport application it states that your father's name was Yee Hing Bow. Was that true? A. No, sir.

Q. Did you know at that time?

A. Yes, sir.

Q. That your father's name was not Yee Hing Bow? A. Yes, sir.

Q. It says on this passport application your father, and in fact you, were born, both born at Ouing Me village in China, was that true?

A. No, sir.

Q. On this passport application I notice the original address was 1041 Washington Street, apartment 6. Was that your address? A. No, sir.

(Testimony of Jonathan K. Yee.)

Q. Whose address was that?

A. Mr. Fong's mother, Yee Shee's address.

Q. Did Fong say anything to you about why that address should be put on the passport application? A. Yes.

Q. What did he say? [47]

A. He says more safer for the mail to go to 1041 Washington instead of sending it to 1544 Powell Street.

Q. Instead of sending it to 1544 Powell?

A. Yes, sir.

Q. On this passport application it states that the purpose of the trip was to visit mother and other relatives. Was that your sole purpose in making that trip to Hong Kong? A. No, sir.

Q. What was it?

A. Well, the purpose to go back there was to marry Chin Bick Wah and also visit to my mother.

Q. In other words, you had two purposes, is that right? A. Yes, sir.

Q. All right. Now, on this passport application it states, by Mr. Fong's signature, relationship to applicant. If not related, so state, and the word "No" is entered. Now, at that time did you know whether or not William Fong was a relative of yours? A. Yes.

Q. Was he? A. Yes, he was.

Mr. Davis: I will object to this as being not binding on the defendant Fong as to whether he knew he was a relative or not.

The Court: Objection overruled. [48]

(Testimony of Jonathan K. Yee.)

Q. (By Mr. Schnake): Now, in this passport file, Mr. Fong, (sic) there are several, three, I believe, letters which have your signature. Are those letters actually signed by you; the first letter is dated June 19, 1951, you signed that, did you?

A. Yes. sir.

Q. Who prepared that letter, did you?

A. No, sir, I didn't.

Q. Who did? A. Mr. Fong.

Q. Now, I show you a telegram in this passport file to Mrs. Shipley at the passport office stating that "Yee Yuen Foon application for passport since May 14, June 19 letter explains my urgency. Early assurance of passport appreciated. Signed Yuen Foon." Did you send that telegram?

A. No, sir.

Q. Who did? A. Mr. Fong.

Q. All right. I show you next a letter dated July 28, 1951, in the passport file signed Yee Yuen Foon. Did you sign that letter? A. Yes, sir.

Q. Did you prepare it? A. No, sir.

Q. Do you know who had prepared it?

A. Mr. Fong. [49]

Q. All right. Incidentally, in the first letter, June, 1951, I notice the statement that your new mailing address was care of Fong Brothers, post office box 227, San Francisco.

Now, can you tell me whether or not Mr. Fong ever said anything to you about that change of mailing address? A. Yes, sir.

Q. Do you know about when he told you about

(Testimony of Jonathan K. Yee.)

it? Was it around the time this letter was sent, do you think?

A. I think it was just about the time, sir.

Q. Where did he tell you, where did you have that conversation? A. In Mr. Fong's store.

Q. Was there anybody else present?

A. I don't remember, sir.

Q. What did he say about this post office box?

A. Well, he said to use that post office box number more or less to keep the secret from his wife, Gee King Yip, Mr. Fong's wife.

Q. I see. Did he say anything about having any difficulty with her?

Mr. Davis: I will object again, your Honor; counsel is leading the witness.

The Court: Well, it is leading in a way, but it is calling his attention to something. He may answer.

A. Yes. [50]

Q. (By Mr. Schnake): What did he say?

A. Well, Mr. Fong said his wife, Gee King Yip, would get hold of the mail and she would open it, she looked at the letter from Chin Bick Wah from Hong Kong, that is why he had that post office box down there.

Q. Excuse me, Mr. Yee, do I understand she had opened a letter from Chin Bick Wah in Hong Kong? A. Yes.

Q. I see. What else did he say about using this box? A. It was the main purpose.

(Testimony of Jonathan K. Yee.)

Q. I am showing you the third letter bearing your signature dated September 4, 1951. Was that letter signed by you? A. Yes, sir.

Q. Did you prepare that letter?

A. No, sir.

Q. Who did? A. Mr. Fong.

Q. Now, do you have any recollection of your wife doing the typing of any of these letters that appear in this passport file?

A. Might be one of those letters; but I can't remember.

Q. One of these letters? A. Yes, sir.

Q. Did she do that in the presence of yourself?

A. Yes, sir; also Mr. Fong was there, too. [51]

Q. What did Mr. Fong do, if anything, about the preparation of that one letter that she did the typing on?

A. Mr. Fong tell her how to put it down, how to type it and everything.

Q. I see. You don't recall which of the three that was, though? A. No, sir.

Q. About this same time in the summer of 1952 —excuse me, 1951, did you have a conversation with Mr. Fong when he showed you a letter that was to be signed by someone else?

A. I can't remember, sir.

Q. You recall him showing you a letter someone was going to send to a Senator?

A. Yes, sir.

Q. You know where that was he showed it to you? A. In Mr. Fong's milk store.

(Testimony of Jonathan K. Yee.)

Q. Mr. Fong's milk store at 935 Stockton?

A. Yes, sir.

Q. Do you know who else was present when he showed you that letter?

A. I think that Mr. Green, he was there.

Q. Mr. Green?

A. Yes; because Mr. Fong asked him about it. I think the letter was to Senator Knowland.

Q. This was a letter to Senator Knowland, and who was going [52] to sign it, if you know?

A. To the best of my knowledge I think it was Mr. Green.

Q. What if anything did Mr. Fong say about that letter?

A. Mr. Fong asked Mr. Green to do it for him.

Q. Did you see what the letter was?

A. I can't remember, sir.

Q. What subject did that letter concern?

A. I think it concerns about my passport.

Q. During the summer of 1951, after you had gotten the divorce at Reno, but before you went to Hong Kong, do you recall any conversations at which Mr. Levy was present? A. Yes, sir.

Q. Now, first of such conversations, can you tell me where it took place, in the summer of 1951?

A. Well, mostly take place at Mr. Fong's milk store, maybe once or twice over at my place where I live on Powell Street, 1544 Powell Street.

Q. But except for one or two times all conversations at which Mr. Levy was present took place at the store; is that right?

(Testimony of Jonathan K. Yee.)

A. Not all the conversations, sir. Some, most of them—well, I would say some of the conversations, not all of them.

Q. When you say not all, you mean Mr. Levy wasn't present at all the conversations?

A. Yes, sir. [53]

Q. Now, you recall any particular conversation at which Mr. Levy was present in the summer of 1951 at which there was any discussion about this subject of going to Hong Kong? A. Yes, sir.

Q. Who else was present?

A. My wife Jean, Mr. Fong, Mr. Levy, myself.

Q. Can you tell me what was said at that conversation about your trip to Hong Kong?

A. Well, Mr. Levy mention it, and then, and then said draw some kind of paper.

Q. Some kind of paper should be drawn up?

A. Yes.

Q. Regarding what?

A. Something like community property.

Q. Community property? A. Yes.

Q. Go ahead.

A. And, also, have my telephone changed to Jean's name, and also the P. G. & E., the utility, and things like that.

Q. I see.

The Court: I didn't understand that. Read that, Mr. Reporter.

(Record read.)

Q. (By Mr. Schnake): Did Mr. Levy say why

the utilities should be changed to Jean's name? [54]

A. He did mention it, Jean and I supposed to be divorced, she and I not supposed to live there any more.

Mr. Burns: Pardon me, can I have the first part of that answer read?

The Court: Read it.

(Record read.)

Mr. Burns: Thank you.

Q. (By Mr. Schnake): Did you change the utilities and the telephone?

A. Yes, sir. My wife Jean did; I didn't do it, I think.

Q. During that time when the utilities were changed, were you continuing to live there?

A. Yes, sir.

Q. As a matter of fact, during about the first part of September, 1951, before you went to Hong Kong, was that the period when your second child was conceived? A. Yes.

Q. That child was actually born when?

A. He born in June, 1952.

Q. All right. In October of 1951 did you receive word that your passport had been issued?

A. Yes, sir.

Q. As soon as you received that word that it had been issued, did Mr. Fong have a conversation with you about some other papers being [55] prepared? A. Yes, sir.

Q. Where was that that he had that conversa-

(Testimony of Jonathan K. Yee.)

tion? A. At Mr. Fong's milk store.

Q. Who was present at that, if you know?

A. I can't remember, sir. Mr. Fong and I and maybe my wife Jean was there.

Q. All right. What did he tell you to do about any additional papers, if anything?

A. I can't remember, sir.

Q. I will show you the visa file of Chin Bick Wah which I have previously exhibited to counsel, we have certain stipulations regarding it, and ask you, Mr. Yee, if this is your signature on the visa petition? A. Yes, sir.

Q. Now, did William Fong give anything—let's rephrase that.

At this point when you went, when you received word that the passport had been issued, did Mr. Fong have a conversation with you about getting some papers prepared? A. Yes, sir.

Mr. Davis: I object, already asked and answered. He said he didn't remember.

The Court: The answer may stand.

Q. (By Mr. Schnake): Did Mr. Fong take you anywhere to have some documents prepared? [56]

A. Well, when I saw this paper I remember Mr. Fong prepared it for me.

Q. He prepared it? A. Yes.

Q. When you first saw it was it incomplete or did it have the material now on it?

A. It was incomplete.

Q. In other words, part of what now appears on it wasn't on it; is that right? A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. Did you have a conversation with Mr. Fong at this time regarding getting insurance statements and income tax returns?

A. Mr. Fong prepare all papers for me.

Q. Did he say anything to you about that?

A. Yes, sir.

Q. What did he say?

A. He said everything okay, everything all fixed up.

Q. I see. Now, this visa file of Chin Bick Wah, which the witness has just identified contains the visa petition signed by him, will be offered in evidence as Government's Exhibit next in order, and I understand that we have a stipulation as to the authenticity of all those documents, but your same objection as to materiality.

Mr. Davis: That's right.

The Court: The document may be admitted and marked [57] Exhibit 6.

(Thereupon, the foregoing visa application for Chin Bick Wah was introduced in evidence and marked as Plaintiff's Exhibit 6.)

Mr. Schnake: May the passport file and the visa file be passed among the jury at this time, your Honor, or would your Honor prefer that it be done at some later time?

The Court: No; not at this time. Counsel can call to the attention of the jury any particular matter you desire.

Mr. Schnake: Very well.

(Testimony of Jonathan K. Yee.)

Q. When this visa petition was first shown to you by William Fong, did it have the typed material on it regarding your identity and these other questions that are contained here? A. Yes, sir.

Q. Go ahead.

A. And the letter, he asked me to fill it out for him because at the time I can't read, you know, very well, but mostly he prepare for me, he tell me what to put down and what's what.

Q. Now, in this visa petition there is a statement that your name was Yee, or Yee Yuen Foon. Was that actually true? A. No, sir.

Q. It also states in this petition that your father, or rather you had citizenship through the citizenship of your father, Yee Hing Bow. Was that true at that time? [58] A. No, sir.

Q. Did you know that that was not true?

A. Yes, sir.

Q. It further states on here that you were born in Oung Me village in Toishan District. Was that true? A. No, sir.

Q. Did you know that that was not true?

A. Yes, sir.

Q. Shortly before you went to Hong Kong did William Fong have a conversation with you regarding the ticket? A. Yes, sir.

Q. Who was present at that conversation, if you know? A. I can't remember, sir.

Q. Where was it?

A. It was in Mr. Fong's milk store.

(Testimony of Jonathan K. Yee.)

Q. Now, is it correct that you actually departed for Hong Kong on October 26, 1951?

A. Yes, sir.

Q. Now, did you ever pay for that ticket?

A. No, sir.

Mr. Schnake: I believe we have a stipulation, do we not, counsel, that the ticket to Hong Kong for Jonathan K. Yee, which was utilized on October 26, 1951, was purchased entirely from the funds of the defendant, Fong Wy Sum. Is that correct, Mr. Davis, and Mr. Burns? [59]

Mr. Burns: Well, I don't believe we discussed that stipulation, you and I.

Mr. Schnake: Oh.

Mr. Burns: But whatever the record shows and whatever Mr. Davis stipulates to, we have no objection, except to immateriality as to the defendant Levy, or admissibility.

Mr. Davis: In my discussion we agreed to stipulate Mr. Fong bought the plane ticket.

The Court: Bought the what?

Mr. Davis: Bought the plane ticket to which you are referring.

Mr. Burns: I will so stipulate if Mr. Davis makes the statement of fact; however, make the objection on the other ground.

Mr. Schnake: Just so there is no confusion, is there any indication by the particular wording you have just used that he did not purchase it from his own funds?

Mr. Davis: All I am saying is he bought the

ticket. I don't know whether he used his own funds, borrowed money, or where he got it.

Mr. Schnake: I see. All right.

Q. Did you pay for that ticket, Jonathan?

A. No, sir.

Q. Have you ever paid the price of that ticket to William Fong or anybody else? [60]

A. No, sir.

Q. Do you know approximately how much that cost?

A. I think it was around $1,300.00, somewhere around there.

Q. When you went to Hong Kong do you recall who, if anyone, saw you off at the airport?

A. Yes, sir.

Q. Who was that?

A. My wife Jean and then my daughter Joanne, and Mr. Fong, and then Mr. Fong's mother, Yee Shee, Henry Leo, a friend of mine, at the time I was working for him, and Mr. Leo's son. That was all, I think.

Mr. Davis: May I have that answer read?

The Court: Read it, Mr. Reporter.

(Record read.)

Mr. Davis: Thank you.

Q. (By Mr. Schnake): Did Henry Leo take any pictures of you and the other people at the airport?

A. Yes, sir.

Q. At the time of your departure?

A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. As a matter of fact, were pictures taken on two different cameras? A. Yes, sir.

Q. I'll show you a photograph of several persons with an airplane in the background, ask you if that is an enlargement [61] of a picture at the time you departed for Hong Kong? A. Yes, sir.

Mr. Schnake: Offer the picture just identified as the Government's Exhibit next in order.

Mr. Burns: May the record show objection on behalf of the defendant, Levy?

The Court: Objection overruled. Give it number seven.

(Thereupon, the following photograph was marked and introduced in evidence as Government's Exhibit No. 7.)

Q. (By Mr. Schnake): I will show you another picture purporting to be that of a person there at the airport, and ask you if that is a picture that was taken—rather an enlargement of a picture that was taken at the time you departed for Hong Kong? A. Yes, sir.

The Court: Taken at the same time?

Mr. Schnake: At the same time.

The Witness: Yes, sir.

Mr. Schnake: I will offer that as the Government's Exhibit in evidence next in order.

The Court: 7-A.

(Thereupon, the foregoing photographic enlargement was introduced into evidence as the Plaintiff's Exhibit No. 7-A.)

(Testimony of Jonathan K. Yee.)

Q. (By Mr. Schnake): And a third enlargement of persons, with a building in the background; I will ask you is that a [62] picture that was taken of you, your wife and other people in the background at the time of the departure to Hong Kong, October, 1951? A. Yes, sir.

Mr. Schnake: I offer that in evidence as the Government's Exhibit next in order.

The Court: 7-B

(Thereupon, the foregoing photographic enlargement was introduced into evidence and marked as Plaintiff's Exhibit No. 7-B.)

Mr. Burns: May the record show an objection on the same grounds, 7-A and -B as 7, your Honor?

The Court: The objection will be overruled.

Q. (By Mr. Schnake): Now, were there some colored pictures taken at the time you went to Hong Kong?

A. Yes, sir; my wife's box camera.

Q. Your wife's box camera. Is this one of the colored pictures I am now showing you that was taken at that time? A. Yes, sir.

Q. I call your particular attention to the date on the back showing it was printed by the Eastman Kodak Company, week of October 29, 1951. Is that the same week you departed for Hong Kong?

A. Yes, sir.

Q. This other colored picture showing yourself and an older woman, was that taken at the same time under the same circumstances? [63]

(Testimony of Jonathan K. Yee.)

A. Yes, sir.

Mr. Schnake: These two colored pictures will be offered as exhibits next in order, your Honor.

The Court: 7-C and 7-D.

Mr. Burns: Same objection, your Honor, please.

The Court: It may be overruled.

(Thereupon, the foregoing colored pictures were marked and introduced into evidence as Plaintiff's Exhibits Nos. 7-C and 7-D.)

Q. (By Mr. Schnake): Taking these pictures, Exhibit 7, I will ask you who is the woman on the right-hand side, the older woman?

A. She was my aunt, Mr. Fong's mother.

Q. Yee Shee? A. Yee Shee.

Q. That, of course, is you in the middle, and who is that you're holding?

A. This is my daughter, Joanne.

Q. Who's that standing right next to you?

A. That is my wife, Jean.

Q. And who is standing next to your wife, Jean?

A. That is Mr. Fong Wy Sum.

Q. These pictures have exactly the same persons in the pictures; do they not?

A. One is different. [64]

Q. One picture has a little boy in it, and who is that? A. It was Mr. Henry Leo's son.

Q. Henry Leo's son.

Outside of that these are exactly the same people as shown in the others? A. Yes, sir.

Q. Is the same true as to the colored pictures,

(Testimony of Jonathan K. Yee.)

that they contain pictures of yourself with one or more of those same people you have just named?

A. Yes, sir.

Q. At the time you climbed on the airplane what if anything did you do just before you climbed on the airplane?

A. I kissed my wife Jean goodbye.

Q. When you got to Hong Kong, did you meet Chin Bick Wah?

A. Yes; she came to the airport and met me at the airport.

Q. Had you ever met her or seen her before in your life in person? A. No, sir.

Q. Had you ever written a letter to her?

A No, sir

Q. At any time in your life prior to that?

A. No, sir.

Q. When you first got to Hong Kong, when she met you at the airport, did you have a conversation with Chin Bick Wah regarding your trip to Hong Kong? [65]

A. Not very much, sir; but she already know what the score is.

Mr. Burns: I move to strike that.

Mr. Schnake: All right, I will stipulate it may be stricken.

The Court: It may go out

Q. (By Mr. Schnake): Mr. Yee, just tell us what she said that made you assume the statement you just last made.

A. Well, she just say hello, something in Chinese

(Testimony of Jonathan K. Yee.)

to me, and I say a few words. I can't remember exactly what she said.

The Court: How did you know who she was?

The Witness: Mr. Fong send me the picture of Chin Bick Wah, and then she also got a picture of me, Mr. Fong sent it to her.

Q. (By Mr. Schnake): Did she show you that pieture in Hong Kong? A. Yes.

Q. Did you go with her to the Registry of Marriages in Hong Kong? A. Not right away.

Q At a later time? A. Yes.

Q. Now, prior to your—first of all, did you marry her, or did you go with her to the registry of marriages and sign a [66] certificate in Hong Kong? A. Yes, sir.

Q. And was that on or about November 29th, 1951? A. Yes, sir.

Q. I will show you a certificate of marriage, which I have previously exhibited to counsel, and ask you if that is your signature on the certificate of marriage? A. Yes, sir.

Q. All right.

Mr. Schnake: I think we have a stipulation, Mr. Davis, and Mr. Burns, that the other signature is that of the defendant, Chin Bick Wah; is that correct?

Mr. Davis: I will so stipulate.

Mr. Burns: Yes, if Mr. Davis stipulates.

Mr. Schnake: The certificate of marriage, which is a part of the immigration visa of Chin Bick Wah, will be introduced in evidence, or will be

(Testimony of Jonathan K. Yee.)

offered in evidence as the Government's Exhibit next in order, so that it will be the certificate of marriage and immigration visa of Chin Bick Wah.

Mr. Burns: On behalf of the defendant, Levy, we will make the same objection as heretofore noted to the others.

The Court: It may be overruled. Exhibit 8.

(Thereupon, the foregoing marriage certificate and immigration visa of Chin Bick Wah were marked and introduced into evidence as Plaintiff's Exhibit No. 8.) [67]

Q. (By Mr. Schnake): Now, prior to going to the registry of marriages in Hong Kong with Chin Bick Wah, did you have occasion to send a telegram to William Fong? A. Yes, sir.

Q. What did you say in that cablegram?

A. Well——

Mr. Burns: I am going to object to that as not being any foundation. If there is a cablegram it should be produced, a copy of it.

Mr. Schnake: He has already testified he sent a cablegram, your Honor, not a document in our possession. I will ask him.

Q. Do you know where the cablegram is you sent?

The Court: To whom?

Mr. Schnake: Cablegram to the defendant, William Fong?

A. I sent it to Mr. William Fong. I don't know what you do with it.

The Court: You have a copy of it?

The Witness: No, sir.

Q. (By Mr. Schnake): What did you say in the cablegram?

A. I asked him for a divorce paper and some money.

The Court: You asked him for what?

The Witness: For the divorce paper.

The Court: The divorce paper; what divorce paper?

The Witness: Where I divorced my wife. [68]

The Court: Your divorce paper, you mean?

The Witness: Yes, sir.

Q. (By Mr. Schnake): And speaking of money, Mr. Yee, had you received any money just prior to your going to Hong Kong? A. Yes, sir.

Q. How much?

A. About two or three hundred dollars, sir; I can't remember.

Q. From whom did you receive that money?

A. In Mr. Fong's store.

Q. Where did you get it? A. In cash, sir.

Q. I asked: Where was the place that he gave it to you? A. At Mr. Fong's milk store.

Q. Who else was present, if anyone?

A. I can't remember, sir.

Q. All right. Now, shortly after you sent this cablegram, did Chin Bick Wah have a conversation with you in Hong Kong about any money?

A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. Do you know where that was?

A. It was at 85——

Q. Far Yuen Street? A. Far Yuen Street.

Q. Was anyone else present?

A. Yes, sir. [69]

Q. Who else?

A. Chin Bick Wah's aunt and a whole bunch of relatives of Chin Bick Wah.

Q. Whole bunch of her relatives?

A. Yes, sir.

Q. What did she say about money right after you had sent that cablegram to Mr. Fong?

Mr. Burns: On behalf of defendant Levy, make the same objection heretofore made.

The Court: Overruled.

A. Well, she says that we need the money for living expenses.

Q. Did she at any time after you sent that cablegram to Mr. Fong indicate whether or not she had received any money from Fong?

A. Yes; she did.

Q. Where was that that she told you that?

The Court: Now, that is leading. He hasn't said she told him that. You used the word, indicate.

Mr. Schnake: All right, I will rephrase the question.

Q. How did she indicate to you she had received any money? A. She told me.

Q. Where did she tell you that?

A. At Far Yuen Street. I can't remember—85 or 87, two of them right next to it. [70]

(Testimony of Jonathan K. Yee.)

Q. When was that conversation, how long after you sent the cablegram to Fong?

A. About a few days later.

Q. Now, just before or approximately a week before you went to the registry of marriages with Chin Bick Wah, did you talk to Mr. Fong on the telephone from Hong Kong to the United States?

A. Yes, sir.

Q. Where were you when you made that telephone call?

A. I was with the telephone company in Hong Kong.

Q. Was anyone else there so that they could hear the conversation, hear your end of the conversation?

A. Excuse me, sir. Chin Bick Wah was there, just Chin Bick Wah was there with me.

Q. Was the conversation in English or Chinese?

A. In Chinese—maybe, well, a few in English.

Q. I see.

What was the conversation as you can best recall?

Mr. Burns: On behalf of defendant Levy, the same objection.

The Court: Overruled.

A. I told Mr. Fong I am not going through with it.

Q. (By Mr. Schnake): Not going through with what?

A. With the marriage with Chin Bick Wah.

(Testimony of Jonathan K. Yee.)

Q. Did you say why? [71]

A. At the time, and then my wife Jean, she write and tell me she is unhappy, Mr. Fong try to make a play for her.

Q. Did you say that to Fong?

A. Not exactly over the phone, sir.

Mr. Schnake: I will stipulate that may go out about making a play.

Q. But anyway, did Mr. Fong say anything when you told him you weren't going through with it? A. Yes, sir.

Q. What did he say?

A. He says regardless of what happens tell me to go ahead and go through with it and he would do anything for me.

Q. He said he would do anything for you?

A. Yes, sir.

Q. What did you say then?

A. So well, he finally convinced me, and also Chin Bick Wah, you know.

Q. Did Chin Bick Wah talk to you about it at the same time? A. Afterwards, sir.

Q. Right afterwards? A. Yes, sir.

Q. At the time you actually went to the registry of marriages with Chin Bick Wah and signed these papers, what was your intent as to whether or not you would be the husband of Chin Bick Wah? [72]

Mr. Davis: I object to that, your Honor, he signed the registry and going through a ceremony, speaks for itself.

(Testimony of Jonathan K. Yee.)

Mr. Schnake: No, your Honor; the intent in the mind of a person entering a contract is a material issue, and it was held in the Lutwak case, which involved exactly this type of immigration fraud, that the intent of the parties was the very issue in question, that because of the lack of intent to actually have a valid marriage they were not valid marriages.

So I think the question may be directly asked of the party to the ceremony what was his intent at that time.

Now, there is no other way the question, in my mind, can be asked other than to ask directly what was his intent. Either did or didn't.

Mr. Davis: The point is, his intent is not binding on the defendants.

The Court: That's correct, counsel.

Mr. Schnake: Well, your Honor, I think it is because this man is a conspirator and if either of the two parties, or if both of them, lacked the intent to enter into a valid ceremony of marriage it wasn't a valid marriage, and the lack of intent on either party to a marriage renders it void. So that his intent is entirely binding on all the defendants since he is a co-conspirator and particularly because regardless of whether he was a co-conspirator it would be binding on the idea that the validity of that marriage is an [73] issue in this case.

The Court: You intend to show that intent was disclosed to Chin Bick Wah?

(Testimony of Jonathan K. Yee.)

Mr. Schnake: Yes, your Honor; I think we can by further questions and by the description of the conduct of the parties.

The Court: I am not going to permit this question unless you intend to show that intent was transmitted to Chin Bick Wah.

Mr. Schnake: All right, your Honor, I think the conduct, the questions as to the conduct of the parties will be a clear communication as to the intent of the parties at that time.

The Court: Well, at the present time unless you engage to show what I indicated, the objection is sustained to this question.

Mr. Schnake: All right, I will withdraw the question at this time and go into the next matter, if your Honor so desires.

Q. Mr. Yee, can you tell me after this ceremony was performed, did you move in with Chin Bick Wah? A. No, sir.

Q. When you returned—when did you return to the United States?

A. I returned to the United States in February of 1951, I think, sir; '51 or '52. [74]

Q. I refresh your recollection by pointing out you went to Hong Kong in October of 1951. Did you return in October, 1951—did you return in February the following year?

A. Yes, sir; in 1952, sir.

Q. When you returned to the United States, where did you move, where did you live?

(Testimony of Jonathan K. Yee.)

A. I lived at 1544 Powell Street with my wife, Jean.

Q. When Chin Bick Wah returned or came to the United States, did you go down and meet her at the airport? A. Yes, sir.

Q. Who else met her at the airport?

A. Mr. Fong, Mr. Levy, my wife Jean and——

Q. Incidentally, was your little girl there at the same time?

A. I think so, sir. Joanne was there, too. Chin Bick Wah's aunt, not close relation or something, she call her aunt something.

Q. Called her aunt?

A. And uncle was down there.

Q. After you met them at the airport, did everyone have dinner together? A. Yes.

Mr. Davis: I will object. I don't want to be objecting throughout this entire trial, but I think counsel knows that he shouldn't be leading.

The Court: The objection to that last question is [75] sustained.

Mr. Schnake: Frankly, I didn't realize. I am sorry, your Honor.

Q. What did you do after you met at the airport?

A. Well, we all went to a restaurant and eat.

Q. When you say "all," who do you mean?

A. Mr. Levy, Mr. Fong, Chin Bick Wah's aunt and uncle, Jean and myself.

Q. After this dinner where did Chin Bick Wah go? A. She went to Oakland.

(Testimony of Jonathan K. Yee.)

Q. To where in Oakland?

A. I forget the address, sir; but it was——

Q. What type of place was it?

A. It is a hotel.

Q. Who ran the hotel?

A. Chin Bick Wah's uncle and aunt operate over there.

Q. Is that her aunt Chin Yood Sen?

A. Cheung or Chin Yood Sen, same name.

Q. Chin Jung? A. Yes, sir.

Q. Or Chin Yood Sen; is that it?

A. Yes, sir.

Q. Who actually drove Chin Bick Wah over to the Hotel, if you know?

A. Chin Bick Wah's uncle or aunt. [76]

Q. Did you go over to Oakland at the same time?

A. Yes, sir.

Q. Who rode in your automobile?

A. I think I went over with Mr. Fong in Mr. Fong's automobile.

Q. Did you sign the hotel register there?

A. Yes, Mr. Fong tell me to do so.

Q. Where was it that he told you to do that, where did you have that conversation?

A. I think it was in Oakland at the hotel.

Q. At the hotel? A. Yes, sir.

Q. Who was present?

A. Mr. Fong and then Chin Bick Wah's aunt and uncle, myself, my wife Jean was there, my little girl, of course.

Q. How did you sign that hotel register?

(Testimony of Jonathan K. Yee.)

A. Well, he told me to put down Mr. and Mrs. Jonathan Yee.

Q. What address did you put down?

A. 1041 Washington Street, apartment 6.

Q. Was that your address at that time?

A. No, sir.

Q. At that time whose address was it?

A. Mr. Fong's mother, Yee Shee.

Q. After you signed the hotel register, where did you go?

A. Well, we stayed for a little while, we all came back, so [77] I went back to 1544 Powell Street.

Q. With whom? A. With my wife Jean.

Q. Did you continue to live there with her then?

A. Yes, sir.

The Court: With whom?

Q. (By Mr. Schnake): With whom?

A. With Jean, my wife.

Q. Now, at the time that you went through the ceremony of marriage in Hong Kong with Chin Bick Wah, what was your intention as to whether or not you would be her husband?

Mr. Burns: Same objection.

Mr. Davis: Same objection.

Mr. Burns: As heretofore made, your Honor.

The Court: I am inclined to think the objection should be sustained, counsel.

Mr. Schnake: Then, your Honor, I would like an opportunity this evening, if I might, to give your Honor some authorities in the morning.

(Testimony of Jonathan K. Yee.)

The Court: All right. Proceed to something else.

Mr. Schnake: All right, I will.

The Court: I will ask a question.

This certificate of marriage is dated November 29, 1951. Is that right?

The Witness: Yes, sir. [78]

The Court: You left there in February, 1952, to come back, left Hong Kong?

The Witness: Yes, sir.

The Court: Where did you live between the 29th of November of 1951 and February of 1952?

The Witness: Part of the time, sir, I live at 85 Far Yuen Street, and then part of the time I live in the hotel, International Hotel at Hong Kong.

The Court: At any time between those two dates did you live with Chin Bick Wah?

The Witness: Under same roof, but not in same bed.

Q. (By Mr. Schnake): Mr. Yee, can you tell me why you remained in Hong Kong until February?

A. Yes, sir.

Q. What purpose?

A. Well, because my sister, my older sister and my younger sister was supposed to come out and see me in Hong Kong.

Q. Come out from where?

A. From the village.

Q. Did they? A. Yes, they did.

Q. When did they finally get out from the mainland?

(Testimony of Jonathan K. Yee.)

A. I think it was first part in 1951, some time in January, I think.

Q. Then after you had seen them did you arrange passage home? [79]

A. Excuse me, I think it was '52, not '51.

Q. Just after Chin Bick Wah arrived here in this country in March of 1952 did you have a conversation here in the United States with Chin Bick Wah regarding William Fong? A. Yes, sir.

Q. Can you tell me where that conversation took place?

A. It is in the car in front of Mr. Fong's store.

Q. Who else was present besides you and Chin Bick Wah?

A. I don't quite understand the question.

Q. I am asking you, Mr. Yee, about a conversation with Chin Bick Wah about William Fong right after she came back.

A. She wasn't in the car.

Q. Are you referring to another conversation in the car?

Let's take the conversation with Chin Bick Wah here in the United States about William Fong.

A. It was at the hotel in Oakland where she lived.

Q. Had you stopped by to see her?

A. Yes, sir.

Q. Who else was present, if you know?

A. I know Chin Bick Wah's aunt and uncle were there.

Q. They were there? A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. What did Chin Bick Wah say, if anything, about William Fong?

Mr. Burns: Same objection heretofore made on behalf of [80] the defendant Levy, your Honor.

The Court: Overruled.

A. She said she wouldn't marry William Fong, she says she wouldn't do it.

Q. (By Mr. Schnake): She would not do it?

A. Yes, sir.

Q. Can you tell me anything else she said in that conversation about William Fong, or about any dealings with him?

A. Yes, sir; she didn't remark about William Fong, she don't like him, or don't like the way he looks, things like that.

Q. Did she describe just what it was she didn't like about his looks?

A. She says—I can't tell you, she mention, she talked to me in Chinese. The best way I can describe it, the way he looks, she don't like the way he looks, things like that.

Q. Can you tell me what, if anything, was said about going through with any deals?

A. Well, I don't remember, sir.

Q. All right. Now, a few weeks after this first conversation with Chin Bick Wah, did you have a conversation with William Fong in his car?

A. Yes, sir.

Q. Where was the car?

A. The car parked right in front of Mr. Fong's milk store. [81]

(Testimony of Jonathan K. Yee.)

Q. In front of his milk store?

A. Yes, sir.

Q. Was anyone else present at that conversation? A. No, sir.

Q. Can you tell me what was said?

A. Well, at the time Mr. Fong he think I was hanging onto her.

Q. Now, did he say that, or are you just——

A. No; Mr. Fong actually say that.

Q. What else did he say?

A. Well, he wants me to—I mean, call it quits, something like that. We discussed partly in Chinese and partly in English, and then he wants me to lay off, or something, so I am in—so he and Chin Bick Wah can get together.

Q. What did you say, if anything, in reply to that?

A. I said if she don't like to marry you, nothing else I can do; I made the remark I might marry her myself.

Q. Did you observe Mr. Fong's facial expression while he was talking to you on this occasion?

A. He don't like that; yes, sir.

Q. Well, just describe what you saw, did he appear to be smiling or angry or what?

A. He's angry, and I would say his face turns green.

Q. Now, during the period of March, April and May of 1952, the three months after Chin Bick Wah came to the United States, [82] did you see William Fong at all? A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. About how often did you see him during that period of time?

A. Oh, I would say not every day, but at least once or twice a week.

Q. Now, did you have any conversations with him regarding Chin Bick Wah in this period of time A. Yes, sir.

Q. The first of such conversations during that period of time, can you tell me where it took place?

A. Well, most of the time at Mr. Fong's store.

Q. Can you tell me who was present at the first of these conversations during the period I have stated?

A. I think at the time, Mr. Fong and myself.

Q. Who else was present at any of the conversations? A. I can't remember, sir.

Q. The first of these conversations that you have described, can you tell me what, if anything, he said about Chin Bick Wah? Did he ask you anything or tell you anything about her?

A. He asked me a lot of things, but I can't remember exactly what he said.

Q. Do you recall any conversation when he asked you what she was going to do?

Mr. Davis: I object, your Honor, the witness says he [83] doesn't recall.

Mr. Schnake: I think it is proper to suggest the topic of the question; he has got to decide what the answer is, if he knows.

The Court: I will permit this question. Read the question.

(Testimony of Jonathan K. Yee.)

(Record read.)

A. I think she did mention it she wants to go to Seattle.

The Court: Who mentioned it?

The Witness: Chin Bick Wah.

Q. (By Mr. Schnake): Now, about this time, in the period from March in 1952 till May, 1952, did you have a conversation with Chin Bick Wah regarding anything that Fong had said or done?

A. No; I can't remember, sir.

Q. You can't recall. All right. Now, in the last part of May did you have a conversation with Chin Bick Wah regarding going to Reno?

A. Yes, sir.

Q. Where did that conversation take place?

A. It is over in Oakland where she lived.

Q. Who else was present, if anyone?

A. Just Chin Bick Wah and myself.

Q. What did she say regarding that subject?

Mr. Burns: Same objection on behalf of the defendant, Levy, [84] your Honor.

The Court: Overruled.

A. She said she wants to go up to Reno and get married to make it more permanent so in case anything happen, well, most permanent, more sure so she can stay here.

Q. More secure, is that what you said?

A. More secure.

Q. That she could stay here? A. Yes.

(Testimony of Jonathan K. Yee.)

Q. What else did she say, if anything, about why she wanted to go to Reno?

A. Just what she said, she wanted to get married, you know, and be sure, I mean, everything is okay so she can stay in the United States.

Q. In the United States. All right. Did you go to Reno with her on May 31, 1952?

A. Yes, sir.

Q. Did you go through a ceremony of marriage with her? A. Yes, sir.

Q. What did you do after this ceremony of marriage? A. We came right back to Oakland.

Q. Did you return the same day, in other words, that you made the trip? A. Yes, sir.

Q. Where did you sleep that night? [85]

A. I sleep at 1544 Powell Street.

Q. With whom? A. With Jean.

Q. As a matter of fact, after you returned, a few days after you returned from Reno, was that when your child was born?

A. Yes, sir; within—I can't remember exactly, sir.

Q. Now, during this period of time from when you had returned from Hong Kong up to about August of 1952, had you been having any difficulties with your wife Jean? A. Yes, sir.

Q. Had you had any arguments?

A. We had a fight all the time, sir.

Q. And in August, 1952, did you have a conversation with Chin Bick Wah about going to Seattle?

A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. Where did you have that conversation?

A. It was over in Oakland where she lived, sir.

Q. Who else was present, if anyone?

A. Mostly she and I—Chin Bick Wah and I.

Q. What did she say about that, if anything?

A. She said she had an uncle in Seattle and then she wants to go up there and live with him. Then she wants me to take her up there.

Q. What did you say?

A. Well, so I—I think I was agreed with her to going and [86] taking her up there.

Q. Up to Seattle? A. Yes, sir.

Q. Did you go and get part of your clothing?

A. I got part of my clothing, but not all of them, sir.

Q. Where did you leave the balance of them?

A. At 1544 Powell Street.

Q. Did you pick up your children?

A. Yes, sir.

Q. Did you have a conversation with Jean Yee at that time about taking the children?

A. Yes, sir.

Q. Did you tell her you were going to Seattle?

A. No, sir.

Q. Did you go to Seattle? A. Yes, sir.

Q. When you got to Seattle did you live with Chin Bick Wah as husband and wife?

A. Yes, sir.

Q. Now, as soon as you got to Seattle did you have any difficulties with Chin Bick Wah?

(Testimony of Jonathan K. Yee.)

A. Yes, sir.

Q. Did you have any arguments?

A. I had a fight on the way up, I even slapped her.

Q. Were the children crying at that time? [87]

A. She was pretty mean to my girl Joanne, so I got mad.

Q. Describe what happened.

A Well, when I get to Portland, Oregon, Joanne was doing something she don't like, and then she apparently—I mean, slapped her or something, so I got mad, so, and then I slapped her instead.

Q. Approximately a week after you arrived in Seattle did you call your wife on the telephone?

A. After I got up to Seattle; yes. And then, had a very difficult time with Chin Bick Wah, so then I finally decide to call my wife Jean to come up and get the children and come back.

Q. What did you tell Jean when you called her on the telephone?

Mr. Burns: I will object to that as leading.

The Court: She is not charged with being a conspirator, is she?

Mr. Schnake: Yes.

The Court: Jean?

Mr. Schnake: Yes.

The Court: I will permit the answer.

The Witness: Will you repeat the question?

Q. (By Mr. Schnake): What did you tell Jean when you called her?

(Testimony of Jonathan K. Yee.)

A. I tell her I was awfully sorry and better come up and [88] get the kids, I am coming home.

Q. Did Jean come up to Seattle?

A. Yes, sir.

Q. Did you and Jean and Chin Bick Wah have a conversation there in Seattle? Let's say did you and Jean have a conversation in Chin Bick Wah's presence? A. Yes, sir.

Q. Was that mostly in English?

A. Yes, sir. And then——

Q. What did you do then?

A. Well, after, when she flew up to Seattle, and then we drive back.

Q. You drove back in your car?

A. Yes, sir.

Q. Who did you bring back in the car?

A. Bring back Chin Bick Wah and then my daughter Joanne and my boy Jeffrey and Jean.

Q. When you got back to San Francisco you went directly to your house; did you not?

A. Yes, sir; I did.

Q. And what occurred after you got inside the house?

A. Chin Bick Wah got on the phone and called Bill Fong.

Q. What did he do?

A. And then he came right over to my house and then he stay there for a little while. [89]

Q. Did Chin Bick Wah—what was Chin Bick Wah doing when she was there in the house and Bill Fong was there?

(Testimony of Jonathan K. Yee.)

A. Well, I remember she making the remark to Mr. Fong I was threatening her with a gun to take her to Seattle. After Mr. Fong left, and then she was crying in front of me and wants me to take her back.

Q. Wanted you to take her back?

A. Well, she says, so why don't we just—so my wife, when she talked to Mr. Fong, something else, she said I threatened her with a gun to take her to Seattle.

Q. When Fong was there did you say anything to her about repeating that statement?

A. Yes, sir.

Q. What did you say?

A. I asked Chin Bick Wah to repeat the question, what she said. She wouldn't do it.

Q. What did she do?

A. She just started crying.

Q. Then did she finally leave the house?

A. Yes; for a little while then she left with Mr. Fong and her aunt.

Q. Oh, had her aunt come?

A. Yes; she was over to the house, too.

Q. And from that day since have you ever had any extended conversation of any sort with Chin Bick Wah? [90]

A. No, sir; from then on she don't talk to me any more. Sometimes I try to say hello to her in the street, but she didn't want to talk to me.

(Testimony of Jonathan K. Yee.)

Q. From that day when you returned from Seattle, with whom have you lived?

A. With my wife Jean.

Q. And then have you gone through another ceremony of marriage with your wife Jean?

A. Not until last year, sir.

The Court: Not what?

The Witness: Not until last year, 1955.

Q. (By Mr. Schnake): Last year did you go through a ceremony in the church?

A. In the church; yes.

Q. Now, after this Seattle episode, about two weeks after you returned from Seattle, did you have a conversation with Yee Shee?

A Yes, sir

Q. Where was that conversation?

A. Over at Yee Shee's apartment.

Q. What street?

A. At 1041 Washington Street, apartment 6.

Q. Who else was present?

A. Just Yee Shee and myself.

The Court: Counsel, I think I will interrupt at this [91] time. We are about to take a recess at this time until tomorrow morning at 9:30. Remember and follow the admonition heretofore given you. 9:30 tomorrow morning.

(Thereupon, the Court adjourned until 9:30 a.m. of Tuesday, July 10, 1956.) [92]

Tuesday, July 10, 1956, 9:30 A.M.

Mr. Schnake: Your Honor, before the jury is brought in, there is a matter of evidence I might discuss with the Court, not the point about the intent.

The Court: What is the other matter?

Mr. Schnake: Well, the other point is, has to do with Mr. Burns' opening statement, giving an indication of what is to be asked on cross-examination, and it refers to the conduct of the witness Jonathan Yee with his wife Jean Yee in 1946, after the time of their marriage.

Reference was made to the fact that their first child was born three months after the marriage, and I think that rather than arguing the matter in the presence of the jury I would like to have it stated now that the Government vigorously opposes any questions of that sort.

The Court: It doesn't appear to me, Mr. Burns, that that is admissible. I didn't stop you in your opening statement, but when the time comes to attempt to offer that I would think the objection should be sustained.

Mr. Burns: Well, if your Honor please, I don't know what the facts of the matter are, and all my information, like Mr. Schnake's, comes from other people who are concerned in this case. It is my understanding that the child was born——

The Court: So what? [94]

Mr. Burns: The Government has introduced this witness and vouches for his credibility.

The Court: You can't attack credibility by that, Mr. Burns.

Mr. Burns: I think any conduct of immoral nature is the subject matter of exploration and the fact of the credibility of a witness, likewise his conduct with other women other than his wife, persons mentioned in this indictment, is subject matter for scrutiny with reference to his credibility.

The Court: I wouldn't think the matter you mentioned about the child would be admissible. I can see how it could get in, Mr. Schnake, under other questions, that if it gets in it's in, but as a direct question, if it's asked, why, I will sustain the objection.

Mr. Schnake: Very well.

Your Honor, regarding that matter of intent I had asked the question, I believe, the second time.

The Court: My feeling about that is that will be admitted for the purpose of showing the intent of this witness, but it is not binding upon Chin Bick Wah to show what her intent was.

Mr. Schnake: That's perfectly in accordance with my views, your Honor, yes, sir.

(The following proceedings were had in the presence of the jury.) [95]

The Court: The jury is present, you may proceed.

JONATHAN K. YEE

recalled as a witness. Previously sworn.

Direct Examination
(Continued)

By Mr. Schnake:

Q. Mr. Yee, I believe yesterday you testified that you thought Mr. Levy accompanied all of the other members of the group to dinner the day that Chin Bick Wan arrived from Hong Kong, is that right? A. Yes, sir.

Q. Now, have you given some further consideration to that and have you any correction you wish to make in your testimony?

A. Yes, sir, last night I thought it over. I don't believe he was there, not when we went to dinner.

Q. Was he there at the airport?

A. Yes, sir, he was at the airport.

Q. Do you recall his saying anything about whether he could or could not go——

The Court: Don't lead him.

Mr. Schnake: Excuse me.

Q. Did he say anything about his remaining there?

Mr. Burns: I am going to object, if your Honor please. If he had a conversation with Mr. Levy he should fix the time, place and persons present.

The Court: Sustained. [96]

Q. (By Mr. Schnake): At the time that you have indicated at the airport, did you have a con-

(Testimony of Jonathan K. Yee.)

versation with Mr. Levy, or did you hear a conversation by Mr. Levy? A. He said——

Q. Well, first of all, can you recall who else was there at the time he made some statement?

A. Mr. Fong, Mr. Fong's mother, Yee She, Chin Bick Wah's aunt and uncle from Oakland, and my wife Jean and myself, Ruby Yee, Mr. Fong's sister; that's all there.

Q. What was said by Mr. Levy, if anything?

A. Mr. Levy mentioned it and he have to go home to dinner with the family somewhere.

Q. Now, Mr. Yee, you have testified yesterday on May 31, 1952, you went to Reno with Chin Bick Wah, is that correct? A. Yes, sir.

Q. You went through another ceremony of marriage, is that correct? A. Yes, sir.

Q. Is this photostatic copy of an affidavit the document you executed when you went with Chin Bick Wah to Reno? A. Yes, sir.

Q. Does that have your signature on it?

A. Yes, sir.

Q. Is this her signature below yours?

A. Yes, sir. [97]

Q. The certified copy of the affidavit of application for marriage license will be offered in evidence as Government's Exhibit next in order.

The Court: Exhibit 9.

(Thereupon the foregoing certified copy of affidavit of application for marriage license was introduced and marked as Government's Exhibit No. 9 in evidence.)

(Testimony of Jonathan K. Yee.)

Q. (By Mr. Schnake): I believe yesterday, Mr. Yee, you had stated the time and place and persons present of a conversation with Yee Shee several weeks after you returned from Seattle, which conversation was held at her apartment, is that correct? A. Yes, sir.

Q. Now, would you state what Yee Shee said and what you said?

A. She called me up, Yee Shee called me up. I went up to her apartment. She asked me to go ahead and get a divorce and get it over with so Chin Bick Wah can marry Mr. Fong.

Q. What did you say?

A. So I told her, said I will not do it on account of Mr. Fong keeping me, pushing me around and giving me a raw deal, or something like that.

Q. Was anything said about expenses in this conversation?

The Court: In connection with the suggestion I made yesterday, counsel, concerning these names——

Mr. Schnake: I see I didn't write them all on the board. [98]

The Court: You used "Yee Shee." So the jury may understand it, would you write that, please?

Mr. Schnake: All right.

The Court: That is also the mother of Fong Wy Sum, is it not?

Mr. Schnake (Writing on the blackboard): Yes, I will put that in parentheses.

(Testimony of Jonathan K. Yee.)

Mr. Davis: If the Court please, I am going to object to the word "aunt" which is written on there.

Mr. Schnake: What is that?

Mr. Davis: I am going to object to the language on that writing there to the effect that John's aunt——

The Court: Well, that is the testimony of this witness.

Mr. Davis: It is hearsay as to my client, your Honor.

The Court: It is there soiely for the purpose of identifying the person he is talking about; this witness has so testified.

Mr. Davis: It is limited to that purpose.

The Court: Limited to that purpose.

Mr. Davis: As to what he said.

The Court: That's right.

Q. (By Mr. Schnake): Mr. Yee, to get some of these other names straight, would you tell me what other names you knew Chin Bick Wah by in the United States?

A. Also known as Helen Chin. [99]

Q. Helen Chin, C-h-i-n? A. Yes, sir.

Q. I suppose we should put down Ruby Fong. You have mentioned Ruby Fong, and who is she to William Fong? A. Mr. Fong's sister.

Q. You have also mentioned Benton Fong?

A. Yes, sir.

Q. What other name is he known by?

A. He also known as Fong Kim Quon.

(Testimony of Jonathan K. Yee.)

Q. Is that also pronounced sometimes Gim Quon? A. Yes, sir.

Q. Quite often the G and K are pronounced the same—the same word will be given a k or g sound?

A. Yes, sir.

Mr. Davis: If the court please, while Mr. Schnake is there, you asked what other name Chin Bick Wah was known as in this country. She was also known as Mrs. Jonathan Yee, wasn't she?

Mr. Schnake: The chalk is there, Mr. Davis.

Mr. Davis: All right. (Writing on blackboard.)

Q. (By Mr. Schnake): Now, at the time that Yee Shee had this conversation with you, with whom were you living?

A. I was living with my wife Jean at 1544 Powell Street.

Q. You have testified that the Seattle trip was in August of 1952, is that right? [100]

A. Yes, sir.

Q. So that this conversation with Yee Shee would have been in either August or September of 1952? A. Yes, sir.

Q. I will show you a personal installment note from the Bank of America, which I have previously exhibited to counsel for the defendants, and ask you, Mr. Yee, is that your signature?

A. Yes, sir.

Q. On the note? A. Yes, sir.

Q. Can you identify the other signature?

A. Yes, it was my wife Jean's writing.

Q. Did you on September 4th execute that note?

(Testimony of Jonathan K. Yee.)

A. Yes, sir.

Q. Who went to the bank to do that?

A. My wife Jean and I both went to the bank.

Q. Yes. For what purpose did you secure this loan?

A. Well, we bought a television, you know, on that.

Q. For your home? A. Yes, sir.

Mr. Schnake: This note will be offered in evidence as Government's exhibit next in order.

The Court: Exhibit No. 10.

(Thereupon the installment note mentioned above was marked and introduced into evidence as Government's Exhibit No. 10.) [101]

Q. (By Mr. Schnake): Now after that time that you had the conversation with Yee Shee, did you learn that divorce proceedings had been commenced against you by Chin Bick Wah?

A. Yes, sir.

Q. I have already shown you the decree of divorce from Helen B. Chin Yee.

Mr. Burns: Not me.

The Court: Have you any other exhibits you desire to present through this witness' testimony?

Mr. Schnake: No, your Honor, I am sorry for the delay. I thought we had exhibited all documents to counsel.

The Court: If you have any documents that you are going to put in evidence, exhibit them to counsel first and save time.

(Testimony of Jonathan K. Yee.)

Mr. Schnake: Yes, your Honor, I will do that ahead of time.

The authenticated decree and transcript of testimony in Helen B. Chin Yee versus John K. Yee in the District Court of Nevada will be offered in evidence as Government's Exhibit next in order.

The Court: Exhibit No. 11.

(Thereupon the foregoing decree and transcript of testimony of Yee v. Yee, District Court of Nevada, was marked and introduced in evidence as Plaintiff's Exhibit No. 11.)

Q. (By Mr. Schnake): Mr. Yee, do you recall the time when [102] you were subpoenaed to appear before the Federal District Grand Jury in April of this year? A. Yes, sir.

Q. On the Friday that you were to appear—correction, on the Thursday night before you were to appear on Friday, do you recall having a telephone conversation with Yee Shee and William Fong?

A. Yes, sir.

Q. Now, about what time of the evening was that?

A. It was about ten o'clock, I think, a little bit after ten.

Q. Where were you when the phone call was made? A. I was home at 218 Hale Street.

Q. Is that the home where you permanently reside now? A. Yes, sir.

Q. Who lives there with you?

(Testimony of Jonathan K. Yee.)

A. My wife Jean and my daughter Joanne and my boy Jeffery.

Q. All right. Now did you place this phone call or did you receive it? A. I received it.

Q. Who did you talk to first?

A. I talked to Mr. Fong's mother, Yee Shee first.

Q. Can you recall what she said to you?

Mr. Burns: I am going to object unless he answers yes or no to this question. [103].

The Court: What's that?

Mr. Burns: Are you expecting the answer to this question to be yes or no, do you recall; otherwise I wouldn't have a proper objection; if he is going to relate a conversation I want to interpose an objection.

Q. (By Mr. Schnake): Would you state what he said to you?

Mr. Burns: I will object on behalf of the defendant Levy, that as to him it is hearsay and outside the scope of this indictment, if your Honor please. This is a conversation in April of 1956, and the events that are related by this witness are 1951 and 1952. If there is any conspiracy as alleged in the indictment it terminated, and any declaration of this conspirator or any other conspirator would not be binding on the defendant Levy after the termination of the conspiracy.

The Court: The testimony will not be received as against any person who is not covered in the

(Testimony of Jonathan K. Yee.)

conversation. In other words, you are now asking for the statement of Yee Shee?

Mr. Schnake: Yes, your Honor. It is our contention that it is in furtherance of the conspiracy, it was an overt act.

The Court: It may be admitted as to the defendant Yee Shee.

Mr. Schnake: She is not a defendant.

The Court: It may be admitted as proof of the furtherance [104] of the conspiracy, but it is not admitted as against the defendant Levy.

Mr. Davis: I make the same objection, your Honor, on the ground that the defendant Chin Bick Wah and Mr. and Mrs. Fong——

The Court: If the conspiracy is terminated as of this time it will not be admitted as against the defendant Fong, or declaration against the defendant Fong.

Mr. Schnake: Your Honor, it is the Government's contention that the conspiracy continued.

The Court: Is it your contention the conspiracy existed up to two days prior to the indictment?

Mr. Schnake: That is correct, your Honor, that the object of the conspiracy was to bring Chin Bick Wah into the United States and to allow her to remain, since her right to remain would be immediately terminated if it were discovered she was an alien illegally in the country, she would be deported.

The Court: The ruling will stand.

Mr. Schnake: May I state the Government's po-

(Testimony of Jonathan K. Yee.)

sition on that, because there will be some other conversations, your Honor, to the effect that——

The Court: Declarations may be admitted as declarations of the persons that you're testifying about, but as to any other person it will not be binding upon them. [105]

Q. (By Mr. Schnake): Will you state what Yee Shee said to you?

A. She asked me to deny I was her nephew. And then she also tell me go down to see Mr. Fong's lawyer, Jackson & Hertogs.

Q. Now immediately after she talked to you, whom did you talk with?

A. I talked to Mr. Fong.

Q. Was that in the same telephone conversation? A. Yes, sir.

Q. How did you start talking to Mr. Fong? Let me rephrase the question, Mr. Yee.

Did his mother say anything about whether he was there? A. Yes.

Mr. Davis: If the Court please, I am objecting again on the ground your Honor ruled innumerable times during this trial not to lead the witness. If he had a conversation, he had it, and we want the contents of the conversation.

The Court: Well, I wish you would ask him the entire conversation, Mr. Schnake; what was said, his entire conversation with Yee Shee. When you're through with that, go to something else.

Q. (By Mr. Schnake): What else did Mrs. Yee Shee say?

(Testimony of Jonathan K. Yee.)

A. Well, I talked to her for a little while and then she says, wait a minute, Wy Goo wants to talk to you.

Q. Wy Goo? [106] A. Wy Goo.

Q. What does Wy Goo mean?

A. Wy is Mr. Fong's Chinese name and Goo, well, in Chinese we call him, anybody older than I am, we call them Goo, just a Chinese courtesy.

Q. I see. So when Yee Shee refers to her son, William Fong, does she use that term Wy Goo?

A. Yes, sir, because she say that in Chinese and she talk Chinese with me over the telephone. So she said Wy Goo want to talk with me, Mr. Fong get on the phone, and then Mr. Fong tells me, "I heard you have to go to the Grand Jury tomorrow."

He says, "Don't admit anything I'm your cousin." And he also wants me to go down to see Mr. Fong's lawyer, Jackson.

Q. Go ahead.

A. Then I told Mr. Fong, I said "I don't know Mr. Jackson."

He said, "You just go down there. I already arranged with him this morning, tomorrow morning you go down there first thing in the morning, you see him," and he says, Mr. Fong says, "I will take care of all the expenses and everything."

Q. Now the following morning, Friday, did you have another telephone conversation with Yee She?

A. Yes, sir.

Q. At about what time was that?

(Testimony of Jonathan K. Yee.)

A. It was about five-thirty in the morning. [107]

Q. Did you place the call or receive it?

A. My wife received the call from Oakland.

Q. Then did you talk on the telephone?

A. Yes, sir.

Q. Whom did you talk with?

A. I talked with Mr. Fong's mother, Yee Shee.

Q. What did she say and what did you say?

Mr. Burns: Same objection as interposed before, your Honor.

The Court: This is admitted not as against the defendant Levy, and up till now not as against the defendant Fong.

Mr. Schnake: Your Honor, it isn't——

The Court: Proceed, Mrs. Schnake. That is going to be the Court's ruling.

Mr. Schnake: All right.

The Court: It's admitted for such weight as it may have to prove the existence of the conspiracy, but for that purpose only.

Q. (By Mr. Schnake): Would you relate the conversation, Mr. Yee?

A. Mr. Fong's mother, Yee Shee, and she asked me to go to Oakland to Mr. Fong's sister's place, Ruby Fong, and then he said Ben Fong will be there.

Q. Benton Fong?

A. Yes, Benton Fong, and he will be there over at Ruby [108] Fong's place. So then she asked me go —Mr. Fong's mother, she asked me to go over to Oakland and have breakfast over there so I can go

(Testimony of Jonathan K. Yee.)

through, go over with Benton Fong, and then what to say and what not to say in front of the Grand Jury.

Q. Was there any conversation regarding a picture in that telephone call? A. Yes, sir.

Q. What was said and by whom?

A. Mr. Fong's mother, Yee Shee, then she says, how the Immigration got hold of Benton Fong's picture, and then on the picture, and what was said, "To my dear cousin Johnny" and then Mr. Fong's mother, she wants to know how they got hold of the picture.

Q. Now going back a considerable period of time, Mr. Yee, to when you first talked with William Fong about the matter of bringing Chin Bick Wah over to this country in 1950 and 1951, do you recall any conversation with William Fong regarding questioning by Immigration officers? Just answer yes or no, if you recall any conversation with Mr. Fong on that subject. A. No, sir.

Q. Do you recall any conversation in which it was discussed what should occur if you were questioned by Immigration?

Mr. Davis: I am going to object. He says he doesn't remember any such conversation. [109]

The Court: I will permit the question.

A. Yes, sir.

Q. (By Mr. Schnake): Well now, can you recall approximately when such a conversation took place? When in relation to your going to Reno or any other event you can recall?

(Testimony of Jonathan K. Yee.)

A. At the time he was talking over with me it's before when I went to Reno.

Q. Before you went to Reno? A. Yes, sir.

Q. Where did that conversation take place?

A. Take place at Mr. Fong's milk store at 935 Stockton Street.

Q. Who was present?

A. Mr. Fong, Mr. Levy, my wife Jean, and myself.

Q. Can you relate what Mr. Fong said and what you said?

A. Mr. Fong said, and then he said if in case I get questioned by the Immigration we have to stay together and get together so we won't get in trouble.

Q. Do you recall any other conversations that anybody else had on that subject at that time?

A. I can't remember, sir.

Mr. Schnake: Your Honor, at this time we would ask that the testimony of Yee Shee, who is named as a conspirator, regarding the questioning, this last phone conversation, be admitted as against all of the defendants named as in furtherance of the conspiracy. [110]

The Court: It has been admitted as proof, if it is so proved, of the existence of the conspiracy. The declaration, however, of one person after the conspiracy is terminated is not binding upon another person alleged as a conspirator. That would be the ruling of the Court.

Mr. Schnake: Your Honor, I thought this testimony would indicate that it is in furtherance of

(Testimony of Jonathan K. Yee.)

the conspiracy, because the object of the conspiracy was to prevent detection of the illegal entry and deportation.

The Court: All right, proceed.

Mr. Schnake: I have no further questions.

Cross-Examination

By Mr. Davis:

Q. Mr. Yee, if I understand your testimony correctly, you said that in 1939 you received some letters from Yee Shee and from Mr. Fong; is that correct? A. Yes, sir.

Q. You were living in China then?

A. In Hong Kong, yes, sir.

Q. You had never been to this country?

A. No, sir.

Q. Had you ever met Mr. Fong?

A. No, sir.

Q. Had you ever met Yee Shee

A. Yes, sir. [111]

Q. Now, this letter which you alleged you received from Mr. Fong, was that written in Chinese or in English? A. In Chinese.

Q. Had you ever received any other letter allegedly written by Mr. Fong? A. Yes, sir.

Q. How many letters did you receive from Mr. Fong?

A. Quite a few of them, sir, I can't remember exactly how many letters.

(Testimony of Jonathan K. Yee.)

Q. Were they all in Chinese? A. Yes, sir.

Q. Don't you know as a matter of fact that in 1939 Mr. Fong couldn't write Chinese?

A. Most—this letter is not write by Mr. Fong, it is by Mr. Fong's sister, Ruby Yee. When they write a letter and sign them, maybe Yee Shee's name or Mr. Fong's name to it. Many Chinese write letters to relatives that don't know—in case I don't know how to write, somebody write for me, somebody sign my name on the letter.

Q. If I understand you correctly, then, when you testified yesterday that you received a letter from Mr. Fong, now, you don't know whether it was written by Mr Fong or not?

Mr. Schnake: Object to that, your Honor, as argumentative. He testified it was signed William Fong, but the actual handwriting was by the sister Ruby Yee. [112]

Mr. Davis: I haven't heard him testify to that.

The Court: Neither side should argue with the witness. You are entitled to cross-examination. Proceed.

Q. (By Mr. Davis): Now, describe this letter that you said you received when you testified yesterday.

A. The letter said Mr. Fong and Mr. Fong's mother, Yee Shee, had put a paper, the paper of a son of the citizen of the United States, for me to come over to the United States.

Q. Now, did you receive one letter? Yesterday

(Testimony of Jonathan K. Yee.)

you said you received two letters. Is this the one letter you are talking about?

A. Well, it was one in this letter.

Q. I didn't understand that.

A. It was one in this letter, and I received from Mr. Fong and Yee Shee, it's more than one letter.

Q. That's what I am trying to find out. I want to ask you now to describe the letter that you received from Mr. Fong.

A. It is more than one letter, sir.

Q. Let's start with the first one. What did the first one say?

A. I can't recall which one is the first one, sir, but I do recall in one of those letters they tell me, and then——

Q. Who told you?

A. Mr. Fong and Mrs. Fong's mother, Yee Shee.

Q. Did they both write the same letter? [113]

A. Not the same letter, they introduce letter they sent to me.

Q. Which letter are you talking about now?

A. I told you, sir, I can't remember exactly which one, but one of those letters. They send me more than one letter.

Q. Did this letter that referred to buying a paper, and so forth, which you say, do you recall that letter? A. Yes, sir.

Q. Was that the letter written by Yee Shee?

A. Well, it is written by Ruby Fong, but is, was Mrs. Fong, Mr. Fong's mother dictation.

Q. You were in China then, right?

(Testimony of Jonathan K. Yee.)

A. I was in Hong Kong, yes.

Q. Did you know Ruby Yee? A. Yes, sir.

Q. You knew her when you were in China?

A. Yes, sir, they went back to China in 1936, Ruby Yee, Ben Fong and Mr. Fong's mother, Yee Shee.

Q. Now, I want to get this clear. Is there only one letter that refers to this paper, or several letters? A. Several letters, sir.

Q. All about the same thing?

A. Well, in a general direction be the same.

Q. In other words, do I understand your testimony correctly to be that when you say, when you testified yesterday that [114] you received a letter from Yee Shee, or Mr. Fong, referring to this paper, you're really stating a conclusion you drew from a large group of letters, or is there one letter?

A. It is more than one, sir.

Q. Who wrote all these letters, if you know?

A. Mostly Ruby Yee.

Q. Did she sign her name to the letters?

A. Not with her name, either sign Yee Shee or Mr. Fong's name.

Q. Do you know she signed Yee Shee or Mr. Fong's name?

A. Well, it is in the same character, which is the letter write to me, it was Ruby Yee's handwriting.

Q. If I also understand your testimony correctly, you said that you also received a letter from Yee Hing Bow, is that correct? A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. Was that in Chinese? A. Yes, sir.

Q. Had you ever met Yee Hing Bow?

A. No, sir.

Q. Had you ever seen his handwriting before?

A. No, sir.

Q. You know who wrote that letter?

A. Well, he signs his name Yee Hing Bow.

Q. Now, Mr. Yee, when you arrived in this country in 1939, where did you first go to [115] work?

A. I work—I come in 1940.

Q. You arrived here in 1940?

A. I mean I was—when I first come here in 1939 I went to the Angel Island Immigration over there for a couple of months.

Q. When you arrived here then in San Francisco in 1940, where did you first go to work?

A. First went to work at the Turk Cafe on Turk and Jones Street.

Q. How old were you then?

A. I was about seventeen.

Q. Were you going to school or not?

A. Yes, sir.

Q. I take it you worked in that restaurant after school? A. Yes, sir.

Q. How long did you work there?

A. I can't tell you exactly how long, sir, I have been there for almost a year, I should say.

Q. How much wages did you receive?

A. $25.00 a month for the school job—after school—and then through the summer vacation I

(Testimony of Jonathan K. Yee.)

worked full time, used to get about $60.00 a month as a fry cook down there.

Q. Then where did you work after that?

A. I also work in another restaurant on Sixth Street. I believe this name was the Rice Bowl on Sixth Street. [116]

Q. And where after that?

A. Then I went to work for Gene's Restaurant which now is on Post Street, I think, that restaurant.

Q. Then did you eventually, in 1941, go to work for Kaiser Shipyards? A. Yes, sir.

Q. How long were you there?

A. A few months, about several months.

Q. Then where did you go to work?

A. And then Mr. Fong got me a job at a dairy farm over at Mill Valley.

Q. You stayed there a couple of months?

A. Few months, yes, sir.

Q. Then where did you go?

A. Then I got myself another job in a chicken ranch.

Q. Then did you go to work for Mr. Fong at his dairy? A. Yes, sir.

Q. His dairy farm?

A. Yes, sir, in Sonoma.

Q. How long did you work there?

A. I worked there several months until I volunteered for the Army in 1944.

Q. How much did you receive while you were working on Mr. Fong's dairy farm?

(Testimony of Jonathan K. Yee.)

A. Just my spending money. [117]

Q. Isn't it a fact that you received your full salary, the same amount you had been receiving at this Mill Valley ranch? A. No, sir.

Q. Well, you left the Mill Valley ranch, and how much were you getting at the Mill Valley ranch?

A. Well, the lady, she was very nice to me, they treated me just like a son in the family and teach me how to read and write and they give me the spending money and $60.00 or $80.00 a month.

Q. I didn't understand that. They gave you spending money and $60.00 to $80.00 a month?

A. Yes, sir.

Q. How much spending money did they give you?

A. I can't tell you exactly, sir. When we go out to dinner and I more or less take care of the money for them, just like one in the family.

Q. You were taking care of all of their money?

A. Not all, most of the money when I go to the store and they sell their eggs, I get paid for the eggs and I take it to the bank for them, and everything.

Q. Did you just take out what you wanted?

A. Yes, sir.

Q. For yourself? A. Yes, sir.

Q. Now, after you came back from the Army did you go back and [118] go to work for Mr. Fong?

A. Yes, sir.

Q. How much did you receive during that time?

(Testimony of Jonathan K. Yee.)

A. At first I was getting about $200.00 a month.

Q. At first. How long did that last?

A. Lasted for about a few years.

Q. And then what did you receive?

A. I received about $250.00 a month.

Q. Wasn't there a period there at one time when Mr. Fong actually turned the business over to you and his brother and his son-in-law, or his cousin?

A. Yes, sir, in name only.

Q. Well, he went away on a trip, didn't he?

A. Yes, sir.

Q. And you and these other people ran the business, didn't you?

A. Well, Mr. Fong's sister-in-law, Roger Lee, and I take care of the retail outlet in Chinatown only for the milk.

Q. In other words, you and this man Roger——

A. The retail——

Q. ——handled the milk route?

A. Yes, sir.

Q. Selling milk around Chinatown?

A. Yes, sir.

Q. And these other people did other things as far as the [119] store, and so forth?

A. That's right.

Q. As a matter of fact, you and this Roger shared all the proceeds you made from this milk route?

A. We have to pay the money back to Mr. Fong for the truck. We have to pay so much a month every month.

(Testimony of Jonathan K. Yee.)

Q. Well, he had left and he had turned the milk route over to you and he let you use his truck, is that correct? A. Yes, we pay for the truck.

Q. And also you used his store and in getting the milk from whatever his supplier was, is that correct? A. Yes, sir.

Q. And you made the profits from the milk route less what you would pay for the use of the truck, is that correct? A. Yes, sir.

Q. Now, directing your attention, Mr. Yee, to your testimony concerning Chin Bick Wah, or your going to the hotel in Oakland. A. Yes, sir.

Q. After this dinner that you went to, is that correct? A. Yes, sir.

Q. Now, with whom did you go to Oakland?

A. Mr. Fong, Chin Bick Wah's aunt and uncle, my wife Jean, myself, I believe my daughter Joanne was with us, too

Q. Isn't it a fact that you and Chin Bick Wah went over [120] there by yourselves?

A. I don't quite get you, sir.

Q. I see. Isn't it—well, will you read him the question?

(Record read by the Reporter.)

Mr. Schnake: Referring, Mr. Davis, to this same date they all arrived?

Mr. Davis: I identified the time, it was after the dinner that they had.

A. No, sir, not alone.

Q. (By Mr. Davis): And isn't it a fact that you signed the hotel register? A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. Isn't it a fact that when you signed it the only people present were Chin Bick Wah and this woman who ran the hotel?

A. I think Mr. Fong was there too. It was Mr. Fong's idea.

Mr. Davis: I will ask that go out, your Honor, as being not responsive.

The Court: The last may go out.

Q. (By Mr. Davis): What time was that, about?

A. I don't remember exactly the time, but it was after the dinner, I should say in the evening, late in the evening.

Q. Now, from the time you registered in that hotel—first of all, up until the time you went to Reno, isn't it a fact that you lived over there with Chin Bick Wah? [121]. A. No, sir.

Q. Well, you paid the room rent, didn't you?

A. No, sir.

Q. Isn't it a fact that when you left to go to Reno or to Seattle, rather, you left a note and letter to the woman who ran the hotel with $180.00 in it to pay the rent?

A. No, sir, not my money.

Q. If I understand your testimony correctly yesterday you say that all this time, from the time Chin Bick Wah arrived in the country, in this country and while she was living over there in the hotel, except for the time you went to Seattle with her that you were living with your wife on Powell Street, is that correct? A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. Were you living there every day?

A. You mean on Powell Street, sir?

Q. Yes.

A. Well, not every day, sir.

Q. Where were you on the days you weren't living there? A. I was working at Maxwell.

Q. When was that.

A. Just before I went, Chin Bick Wah and I went to Seattle.

Q. How long were you working up in this Maxwell? A. About two or three weeks, sir.

The Court: Where is Maxwell? [122]

The Witness: It is up on the other side of Sacramento.

Q. (By Mr. Davis): What type of work were you doing up there?

A. I was a carpenter.

Q. For whom were you employed?

A. Henry Leo.

Q. Henry Leo? A. Yes, sir.

Q. Now, when you went up to Seattle on this trip with Chin Bick Wah, how did you go?

A. By automobile.

Q. Was that your automobile?

A. Yes, sir.

Q. Who went with you?

A. My daughter Joanne and my boy Jeffery.

Q. How old were they?

A. I think Jeffery was a few months old, and then Joanne was about three or four. I can't re-

(Testimony of Jonathan K. Yee.)

member, either three or four in 1952. Joanne was about four.

Q. You went up there in this automobile, one automobile? A. Yes, sir.

Q. What type? A. It is a '50 Chrysler.

Q. Isn't it a fact that you actually took the trailer with all your furniture in it? [123]

A. Not when I go up there, sir.

Q. Not when you went up to Seattle?

A. No, sir.

Q. When did you take the trailer with the furniture?

A. I rented a trailer from Seattle and come back.

Q. In other words, you went from here to Seattle without a trailer and rented a trailer to come back? A. Yes, sir.

Q. What was in the trailer when you came back?

A. Well, I got some lockers in it and some household dishes, things like that.

Q. Furniture? A. No, no furniture.

Q. Now, on this trip up to Seattle, how long did that take to go up from Oakland to Seattle?

A. It take me several days, I can't remember exactly how many days, but it is more than two or three days.

Q. Where did you stop on the way up?

A. On the way up we stopped by the motel.

Q. Which motel?

A. I can't remember which motel, sir.

(Testimony of Jonathan K. Yee.)

Q. Do you know where the first one was, not the name of the motel, but the town?

A. No, we went up by Highway 101. I can't remember which hotel, and then we stop by first, I don't even know, I can't [124] remember the time.

Q. Did you and Chin Bick Wah register at that motel?

A. Chin Bick Wah and myself and my daughter and boy.

Q. Did you sign the registration card?

A. Yes, sir.

Q. You stayed there overnight?

A. Yes, sir.

Q. And then you left there and went on to another motel, is that correct? A. Yes, sir.

Q. The next day do you remember where that second motel was? A. No, sir.

Q. What town? A. No, sir.

Q. But the same thing transpired there, is that correct? A. Yes, sir.

Q. Then do you think you got to Seattle the next day, or did you stop at another motel?

A. We stopped by another motel. I remember one time we stopped at Portland, Oregon.

Q. You stopped once at Portland and you think on at least two other places before arriving in Seattle, is that correct?

A. Two or three times, sir.

Q. At each of those motels you and Chin Bick Wah lived together and you signed the register, is that correct? [125] A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. When you got to Seattle where did you stop?

A. Well, at first we stopped by Chin Bick Wah's uncle's laundry.

Q. Then where did you stay, spend the night?

A. We went out and rented a motel.

Q. Do you know where that was?

A. It's in Seattle.

Q. Do you know if it was the Bush Hotel on Jackson Street?

A. No, it is on the outskirt, more or less on the outskirt of Seattle, and then we came into the hotel, after the first night we came back we lived in a hotel for several days.

Q. Was that the Bush Hotel on Jackson Street?

A. I don't know, I can't remember, sir, but it was near Chinatown.

Q. At that hotel you and Chin Bick Wah and the children lived together and you signed the register, is that correct? A. Yes, sir.

Q. After that did you move to some place else?

A. Yes, sir.

Q. Where was that?

A. We rented the room. I can't remember, it was on a street taken care of by a Japanese couple.

Q. It was an apartment house, wasn't it?

A. It's a rooming house. [126]

Q. St. George Apartment, 105 Fourteenth Avenue in Seattle?

A. I think it was the address, sir.

Q. What did you rent, what type of accomodations?

(Testimony of Jonathan K. Yee.)

A. Well, got a bed in it and got more or less semi-furnished two-room apartment.

Q. Now, when you first came back from China on your trip over there you had a post office box, didn't you, down at the post office down on Battery and Washington Street? A. Yes, sir.

Q. You told Chin Bick Wah to write you there and gave her that post office number?

A. I think I did, sir.

Q. Now, during this time that you say you were living with your wife on Powell Street except for the time—and living there every day except for the time you were up at Maxwell, isn't it a fact that you actually changed your address to 524 Eighth Street in Oakland, the hotel?

A. On some of the documents, sir.

Q. Well, didn't you actually receive a lot of mail over there addressed to you, 524 Eighth Street?

A. I don't remember I did or not, sir.

Mr. Davis: May I have a recess at this time, your Honor? I want to show some documents to counsel.

The Court: All right, take a recess at this time for ten minutes. [127]

(Recess taken.)

The Court (After recess): Proceed.

Q. (By Mr. Davis): Mr. Yee, on this trip up to Seattle you had an automobile accident, didn't you? A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. Did Helen at that time tell you that as a result of that accident she had had a miscarriage?

A. Not that I know of, sir.

Q. Now, before going to Seattle, isn't it a fact that you suggested to Helen that you and she and the children should go down to live in Mojave?

A. I can't remember saying that. I don't think I did, sir.

Q. Isn't it a fact that this woman you testified you worked for that treated you so well, took care of all the money and took what you wanted, had moved down to Mojave and was running a ranch down there?

A. Not Mojave, Ojai, California, sir.

Q. Ojai? A. Yes, sir.

Q. Do you recall whether or not you suggested to Helen that you and she and the children go down to Ojai instead of going to Seattle?

A. No, sir, not that I can remember, sir.

Q. Going back again to the day after Helen arrived in this country, it is a fact, is it not, that you took her up to the [128] Immigration Department and reported that she had arrived?

A. Yes, sir.

Q. Back in September of 1952, did you have any dealings with the Anglo-California National Bank?

A. Yes, sir, before I went up to Seattle.

Q. I show you this letter addressed to you from the Montgomery Street office of the Anglo-California National Bank and ask you—with the address 524 Eighth Street, Oakland, California, did you

(Testimony of Jonathan K. Yee.)

change your address at that time with the Anglo Bank? A. With the Anglo Bank, yes.

Mr. Davis: If your Honor please, I offer this in evidence as Defendant's Exhibit first in order. It is a letter bearing return address of Montgomery Street office, Anglo-California National Bank, Montgomery and Sacramento Streets, San Francisco 11, California, postmarked at San Francisco, September 5, 1952, and addressed to Mr. Jonathan K. Yee, 524 Eighth Street, Oakland, California.

The Court: It may be marked Defense Exhibit A.

(Thereupon, the foregoing letter from the Anglo-California Bank to Jonathan K. Yee, dated September 5, 1952, was marked and introduced in evidence as Defense Exhibit A.)

Q. (By Mr. Davis): I show you a check, Mr. Yee, drawn on the Anglo-California National Bank, Montgomery Street office, dated June 20, 1951, payable to Chin Bick Wah and bearing the [129] purported signature of Jonathan K. Yee, and ask you if that is your signature?

A. Yes, sir, it is my signature.

Mr. Davis: If the Court please, I offer this in evidence as Defendant's Exhibit next in order. The Exhibit consists of three documents attached together.

The Court: A little louder, please.

Mr. Davis: The Exhibit consists of three documents which are attached together, the first being

(Testimony of Jonathan K. Yee.)

a check dated June 20, 1951, drawn on the Anglo-California National Bank payable to Chin Bick Wah in the amount of $90.00, and signed by Jonathan K. Yee, to which is attached a yellow slip of paper directing the—doesn't have any title, your Honor, but it reads: "Your account has been charged for the following items returned unpaid," and another document, a white document, which is the original of the same yellow document.

Mr. Schnake: May I see that a moment?

The Court: It may be marked Defendant's Exhibit B.

Mr. Schnake: I believe you said '51 and you meant 1952, don't you, Mr. Davis?

Mr. Davis: The check is dated June 20, 1951.

Mr. Schnake: Oh, I see. All right.

Q. (By Mr. Davis): Isn't it a fact, Mr. Yee, that prior to your going to China that you told Mr. Fong you had received [130] a letter that your mother was ill and that this was your last chance to see her and asked him to lend you $1,500.00 so you could make the trip to China?

A. No, sir.

Mr. Davis: I have no further questions, your Honor.

Cross-Examination

By Mr. Burns:

Q. Mr. Yee, how old are you? A. I'm 32.

Q. When were you born?

A. I was born on November 25.

(Testimony of Jonathan K. Yee.)

Q. What year?

A. 19, I think it was 1932 or 1933. I'm 33, I was born in 1922.

Q. 1922? A. Yes, sir.

Q. How old were you when you arrived in this country?

A. I was about 17—17, I think, sir. I can't remember, I think 17 in 1940, 1939, last part of 1939 and first part of 1940 I came to San Francisco.

Q. You were about eighteen years old, weren't you?

A. Might be 18, sir. I can't remember.

Q. How did you come to this country?

A. I don't quite get the question, sir.

Q. By what means of transportation did you come to this [131] country?

A. By boat, sir.

Q. What was the boat?

A. I think it is President Taft. I think it was the President Taft.

Q. Did you get off the ship at Honolulu?

A. No, sir.

Q. Did the ship stop at Honolulu?

A. I don't know, sir. Maybe it did. I think it did, sir.

Q. From where did you sail in China?

A. Hong Kong.

Q. Now, you arrived here in San Francisco and you were detained by the Immigration authorities, is that correct?

(Testimony of Jonathan K. Yee.)

A. I was arrived in Los Angeles. I think at the time there was a strike or something and I have to go to Los Angeles and then come to San Francisco by train.

Q. When you came to San Francisco by train were you in the custody of the Immigration people?

A. Yes, sir.

Q. How long did you remain in their custody?

A. For a couple of months, sir.

Q. Can you be more specific?

A. I can't tell you exactly, how long I stayed at Angel Island. I think it was about a couple of months.

Q. You were questioned by the Immigration authorities, were [132] you not, from time to time?

A. Yes, sir.

Q. And you kept insisting your real name was Jonathan Yee, is that right? A. No, sir.

Q. What did you say your real name was?

A. Yee Yuen Foon.

Q. And that you were the son of Yee Hing Bow, is that correct? A. Yes, sir.

Q. Did you make those statements under oath?

A. Yes, sir.

Q. And those statements were false, weren't they? A. Yes, sir.

Q. Now, you recited to us the places of your empolyment in San Francisco. When did you get married to your wife Jean?

A. It was in September, 1947.

(Testimony of Jonathan K. Yee.)

Q. That was in Reno, wasn't it?

A. Yes, sir.

Q. How long had you known her before you married her?

A. I know her right after the war, right after I came back from the service, was in 1946—no, about a year or so, maybe a little, maybe more.

Q. How long were in the Army?

A. I was in the Army two years and one month.

Q. You were discharged in 1945? [133]

A. In '46, sir.

Q. Where were you discharged?

A. At Camp Beale, California.

Q. That was up by Marysville, is that right?

A. Yes, sir.

Q. When was your little girl born, Joanne?

Mr. Schnake: I object to that, your Honor, as being incompetent, irrelvant and immaterial, has no bearing on the issues of this case.

The Court: Sustained.

Q. (By Mr. Burns): What is your little girl's full name? A. Joanne Jean Yee.

Q. How old is she now?

A. She is eight.

Q. What is her birthday?

Mr. Schnake: I will object to that, your Honor; it has already been ruled on and the objection sustained.

The Court: Sustained.

Q. (By Mr. Burns): Now, Mr. Yee, it is a fact, is it not, that you and your wife, during the course

(Testimony of Jonathan K. Yee.)

of your marriage, that is your wife Jean, frequently guarreled? A. Yes, sir.

Q. You fought a good deal of the time, did you not? A. Yes, sir.

Q. And that you separated from time to time, did you not? [134]

A. No, sir.

Q. Do you know a party by the name of Lucille who lives at 951 Clay Street, San Francisco?

A. Yes, sir.

Q. Was that young lady the cause of a quarrel between you and your wife?

A. Well, more or less; not all her fault.

Q. Not all Lucille's fault, is that right?

A. No, sir.

Q. Who was partly responsible in addition to Lucille?

A. The other part we had an argument about an automobile or something and the household furniture, the vacuum cleaner she don't like.

Q. As a matter of fact your wife found you coming out of Lucille's apartment on Clay Street, did she not? A. No, sir.

Q. She found out that you had been there?

A. Yes, sir.

Q. And that was the cause of quite a quarrel, was it not? A. Yes, sir.

Q. And that was approximately in April of 1951, wasn't it?

A. Well, before I went to Hong Kong.

(Testimony of Jonathan K. Yee.)

Q. It was before you went to Reno?

A. Well, yes, sir, before Reno.

Q. When did you go to Reno? [135]

A. It is in 1951.

Q. In April, wasn't it?

A. The first part of '51, yes, sir.

The Court: What month in '51 did you go to Reno?

The Witness: I think it was in April, sir, or so.

The Court: Did you go at or about the date of the letter that appears in evidence here, which is April 10?

The Witness: Yes, sir, I got the letter before I go up there, sir.

The Court: Had you been to Reno before you got that letter dated April 10?

The Witness: No, sir.

Q. (By Mr. Burns): As a matter of fact, Mr. Yee, I'll use this letter to refresh your recollection about which you have heretofore testified, being a part of Government's Exhibit No. 3. This letter is dated April 10, 1951, and signed by Mr. Levy, is it not? A. Yes, sir.

Q. Wasn't it just a matter of just a few days or a week prior to the date of that letter that you and your wife had this big quarrel concerning Lucille?

A. I think so, sir.

Q. Isn't it a fact, Mr. Yee, that on April 10 you came to Mr. Levy's office and related to him a long series of domestic discord with you and your [136] wife? A. No, sir.

(Testimony of Jonathan K. Yee.)

Q. In which you told him about this argument?

A. I might have told Mr. Levy about my argument, but nothing to do with this letter.

Q. Isn't it a fact that you told him you wanted to go to Reno and get a divorce?

A. He—Mr. Levy, he already knew about——

Q. I am asking you what you told Mr. Levy on April 10, 1951.

A. Will you repeat the question, sir?

Mr. Burns: May I have it read again?

The Court: Read it.

(Record read by the Reporter.)

A. Yes, sir.

Q. (By Mr. Burns): That was on April 10, 1951, isn't that so?

A. I can't remember I go down to Mr. Levy's office or not.

Q. You asked him to give you the name of an attorney in Reno. A. Mr. Fong told me so.

Q. I am asking you, Mr. Yee, what you said to Mr. Levy on April 10, the date you received that letter, and isn't it a fact that on that day you told him that you wanted the name of an attorney who could handle a divorce matter for you in Reno?

A. I think I did, sir.

Q. Didn't you tell him you were sick and tired of all these [137] fights and quarrels with your wife Gee?

A. I don't remember my saying that, sir.

(Testimony of Jonathan K. Yee.)

Q. And that you wanted to get a divorce?

A. Yes, sir.

Q. And Mr. Levy wrote that letter and gave it to you right in his office, didn't he?

A. I don't remember he did right then and there or not, sir.

Q. Now, Mr. Yee, you did go to Reno, didn't you? A. Yes, sir.

Q. You went up there on April 11, isn't that correct? A. I think I did, sir.

Q. And you saw Mr. Rutherford on April 12th, is that correct? A. Yes, sir.

Q. And you discussed with Mr. Rutherford your domestic difficulties with your wife Jean, did you not? A. Yes, sir.

Q. You told him that you and Jean had been married in September of 1947, in Reno?

A. Yes, sir.

Q. Isn't that correct? And that you had one child, a daughter Joanne about three years of age?

A. Yes, sir.

Q. And that you had no community property?

A. Yes, sir.

Q. And that you were willing to contribute to the support of [138] your daughter $50.00 a month?

A. Yes, sir.

Q. And that you wanted to get a divorce?

A. Yes, sir.

Q. Did you tell Mr. Rutherford that you were not Jonathan Yee? A. No, sir.

(Testimony of Jonathan K. Yee.)

Q. Mr. Rutherford took all this information that you gave him and he prepared a complaint, did he not? A. I think he did, sir.

Q. It was signed some time in May, the date that you got your divorce, is that correct?

A. Yes, sir.

Q. You had that notarized before a Notary Publice, Mr. Rutherford, is that correct?

A. Yes, sir.

Q. On that date you went into court in Reno, Nevada, is that right? A. Yes, sir.

Q. And you testified? A. Yes, sir.

Q. And you were sworn? A. Yes, sir.

Q. You related the matters that are related in this document, which is marked Government's Exhibit No. 4, is that correct? [139]

A. Yes, sir.

Q. Have you seen this before?

A. Yes, sir.

Q. And you have examined your testimony in this?

Mr. Schnake: I will ask the witness be allowed to examine it.

Mr. Burns: He said he had seen it, I just asked him.

The Court: Have you read that before?

The Witness: I think I did, sir.

Q. (By Mr. Burns): Who showed you that document?

A. Not this document, but the original, I read

(Testimony of Jonathan K. Yee.)

it. It's similar to it, the original, I mean, the divorce paper.

Q. Now, you didn't tell the judge that heard your divorce case in Reno that you weren't Jonathan Yee, did you? A. I don't remember.

Mr. Schnake: I will object to that as assuming something not in evidence, not an issue, the name Jonathan Yee is the American name in the United States. There is no testimony in here he is not Jonathan Yee.

The Court: Overruled.

Mr. Burns: May I have the question read, your Honor, please?

The Court: Read it.

(Question read by the Reporter.)

A. I still don't quite get it. [140]

The Court: A little louder.

The Witness: I don't understand very well, sir.

Q. (By Mr. Burns): Tell us this, Mr. Yee: Are you of the Yee family or the Fong family?

A. I am a Yee family.

Q. You have always said you were Jonathan Yee, is that correct? A. Yes, sir.

Q. That's the name you adopted?

A. Yes, sir.

Q. Now, Mr. Yee, you got your divorce in May of 1951, in Reno, is that correct? A. Yes, sir.

Q. And you returned to San Francisco?

A. Yes, sir.

Q. You related yesterday with reference to the

(Testimony of Jonathan K. Yee.)

time at the airport at San Francisco the persons who were present when Chin Bick Wah arrived from Hong Kong; do you recall your testimony?

A. Yes, sir.

Q. And then this morning you had occasion to correct your testimony as to who was present at the dinner party, is that correct? A. Yes, sir.

Q. Now, who did you talk to last night after you left the [141] courtroom?

A. I talked to my wife Jean.

Q. Did you talk to Mr. Moore?

A. I seen Mr. Moore, but I didn't talk to him about it.

Q. You talked to Mr. Prather?

A. I seen Mr. Prather; I didn't talk to him about that.

Q. Well, as a result of your conversation with your wife Jean you corrected your testimony that Mr. Levy was not present at the dinner, is that correct?

A. Well, it was come to my mind so then—well, before, and then I talk it over with Jean.

Q. And you discussed your testimony in other respects with your wife last evening, I suppose.

A. Not very much, sir.

Q. But you are quite positive now, are you not, Mr. Yee, as you said on the witness stand that Mr. Levy was not present at the dinner party after the arrival of Chin Bick Wah from Hong Kong?

(Testimony of Jonathan K. Yee.)

A. I am pretty sure Mr. Levy wasn't there at the dinner.

Q. Now, when is the first time you spoke to any Government agent concerning the facts of this case?

A. Last year, sir.

Q. On what date?

A. I can't remember the exact date, sir; it was the last part of last year. [142]

Q. What Government agents were there, if there was more than one?

A. Mr. Prather and Mr. Moore.

Q. Is Mr. Moore in court now?

A. I don't see him there, sir.

Q. Mr. Prather is the gentleman seated here?

A. Yes, sir.

Q. Where was this first conversation you had?

A. It was at my home, sir, at 218 Hale Street.

Q. Who else was present?

A. My wife Jean, my daughter Joanne and my boy Jeffery.

Q. What time of the day was this?

A. It was in the evening.

Q. By the evening, what do you mean?

A. After I got home. I got home around five or six o'clock.

Q. It is a fact, is it not, Mr. Yee, that the agents were in your home when you arrived?

A. They were in the doorway when my car drove up on the driveway.

Q. They had been talking to your wife prior to your arrival, had they not?

A. Yes, sir.

(Testimony of Jonathan K. Yee.)

Q. Do you know how long they had been talking to your wife? A. I don't know, sir.

Q. And then they had a conversation with you, is that correct? [143] A. Yes, sir.

Q. Now, how many times have you talked to the Government agents, Mr. Prather and Mr. Moore or anyone else connected with this prosecution, concerning the facts of this case?

A. Many times, sir.

Q. And how many written statements have you given them?

A. I think about one or two, sir.

Q. Your wife has likewise talked to them in your presence? A. Yes, sir.

Q. On many occasions? A. Yes, sir.

Q. Both in your home and elsewhere, is that correct? A. Yes, sir.

Q. Now, did any agent of the Government with whom you talked tell you that you would be liable to prosecution for defrauding the United States?

A. I don't understand, sir.

Q. Well, putting it more simple, Mr. Yee, did any agent of the Government ever tell you you could go to jail? A. No, sir.

Q. Did any agent of the Government tell you that you would be deported? A. No, sir.

Q. Well, isn't it a fact, Mr. Yee, that they told you that unless you testified in accordance with your testimony here [144] that you would be deported and that likewise you might go to jail?

A. I don't understand you, sir.

(Testimony of Jonathan K. Yee.)

Q. You don't understand it or you didn't hear it? A. I don't understand you, sir.

Q. Mr. Yee, isn't it a fact that the Government agents told you that if you didn't co-operate with them and testify in accordance with your testimony here that they would name you in this indictment, not as a co-conspirator only, but as a defendant?

A. No, sir; they didn't tell me that.

Q. They didn't?

Mr. Burns: That's all.

Redirect Examination

By Mr. Schnake:

Q. Mr. Yee, has any Government agent ever promised you you would not be prosecuted?

A. No, sir, they didn't promise me anything.

Q. Has anyone promised you any leniency regarding your immigration problems?

A. No, sir.

Q. Did anybody threaten you at any time?

A. No, sir.

Q. I am referring to anybody from the Government. A. No, sir. [145]

Q. Now, when you first talked with the Government agents in 1955—— A. Yes, sir.

Q. ——did you tell them the truth about this matter? A. Yes, sir.

Q. Did you tell them anything different from what you have told on the witness stand here?

A. No, sir, same thing, sir.

(Testimony of Jonathan K. Yee.)

Q. Mr. Yee, you have testified that right after Chin Bick Wah arrived here you took her to the Immigration authorities, is that right?

A. Yes, sir.

Q. Now, did you have any conversation with William Fong? A. Yes, sir.

Q. Regarding that matter? A. Yes, sir.

Q. Can you tell me when that was?

A. Right after she arrived in San Francisco, I believe it was the next day, I think Mr. Fong tell me to go down——

Q. First of all, before you relate the conversation, where was the conversation?

A. I think it was—I can't remember exactly, either in Oakland or Mr. Fong's store.

Q. Do you recall who else was present besides you and Mr. Fong? [146]

A. No, sir, I can't remember.

Q. All right. Would you relate what was said?

A. Well, Mr. Fong told me to go down to Immigration and report, and then register she was arriving in San Francisco as my wife.

Q. Was that the extent of that conversation?

A. Yes, sir.

Q. Now, I notice, Mr. Yee, that this check is dated June 20, 1951. Did you have an account with the Anglo California National Bank, Montgomery Street, in 1951?

A. I don't remember, it is '51 or '52, sir. I know I had an account and I borrow money from them.

(Testimony of Jonathan K. Yee.)

Q. Did you write a check to Chin Bick Wah in 1951, prior to your going to Hong Kong?

A. Well, I think that this check bounce on account of the date in 1951, I think, I am pretty sure.

Q. You mean the fact that it says "Stale date" on it? A. Yes, sir.

Q. These words "Stale Date" on the return item slip? A. Yes, sir.

Q. Now, when was that check actually issued, then? A. It should be in '52, sir.

Q. All right. Do you recall the purpose for which you wrote that check?

A. I think it was some cash for her and myself, sir. [147]

Q. Do you know how much money of that you were going to get out of that?

A. I can't remember, sir.

Q. At that time were you maintaining another account? A. Yes, sir.

Q. Where was that? A. Bank of Canton.

Q. In that account—who was on that account with you? A. My wife Jean and myself.

Q. This Bank of Canton account, can you tell me whether or not that joint bank account with your wife Jean Yee was maintained during 1951?

A. Yes, sir.

Q. Was it also maintained in 1952?

A. Yes, sir.

Q. As a matter of fact, did you ever close that joint bank account? A. No, sir.

(Testimony of Jonathan K. Yee.)

Q. Between your wife and yourself, Jean Yee?

A. No, sir.

Q. Now, Mr. Burns stated I believe, to you, that you were about eighteen when you arrived in this country. As a matter of fact, you actually entered San Francisco in the first month of 1940, did you not?

A. The first I get on United States soil was in 1939, last [148] part of 1939.

Q. At that time you were just seventeen, were you not?

A. I can't remember, sir; seventeen or eighteen.

Q. You were born in November, 1922, were you not? A. November 25, sir.

Q. All right. So that taking the date of November, 1922, Mr. Burns' statement that you were eighteen when you first entered this country is not correct, is that right? You had not yet had your eighteenth birthday in the first part of 1940?

A. No, sir.

Q. All right. Now, Mr. Yee, you testified that you may have gone to Mr. Levy's office just prior to his writing that letter of April 10, is that right?

A. Yes, sir.

Q. Now, prior to that time had you ever talked to Mr. Levy about getting a divorce in Reno? Had you ever talked in a conversation when Mr. Levy was present, I mean? A. Yes, sir.

Q. How many times?

A. Oh, several times, sir.

Q. Can you recall whether the first of those con-

(Testimony of Jonathan K. Yee.)

versations was prior to this argument with your wife regarding Lucille Lum?

A. I think I had the argument with my wife Jean even long [149] before that.

Q. You had an argument with your wife Jean long before when? A. Before I went to Reno.

Mr. Schnake: That's all.

Mr. Davis: No questions.

Mr. Burns: No questions.

The Court: All right, step down.

(Witness excused.)

KWONG SUEY WAI

a witness called by the Government, Sworn.

Mr. Schnake: If your Honor please, I believe this witness can get by without an interpreter although he has only been in this country a few years, so that we will attempt it without an interpreter. But I would ask the Court's indulgence as to any slowness in response.

The Court: What is your name?

A. My name is Kwong Suey Wai.

The Court: How do you spell it?

The Witness: Kwong Suey Wai.

Direct Examination

By Mr. Schnake:

Q. Do you go by the name of Sherwood Yee in the United States? A. Yes, sir. [150]

(Testimony of Kwong Suey Wai.)

Q. Do you know the witness Jonathan Yee?

A. Yes, sir.

Mr. Schnake: Oh, incidentally, Mr. Yee, now having been identified, should leave the courtroom.

Q. What is his true name, his true Chinese name?

A. His name, I only know him, is Hall Kee.

Q. Hall Kee? A. Yes, sir.

Q. Did you enter this country claiming to be the son of Yee Hing Bow? A. Yes, sir.

Q. Now, are you related to Yee Hing Bow?

A. No, sir.

Q. What is that? A. No, sir.

Q. Are you his nephew? A. Yes, sir.

Q. Perhaps you didn't understand my question. I didn't mean by related are you his son, you are his nephew? A. Yes, I am.

Q. Are you acquainted with the members of his family as to who his true children are?

A. Yes, sir.

Q. Is Jonathan Yee the son of Yee Hing Bow?

A. No, he is not. [151]

Q. Is he related to Yee Hing Bow in any way, so far as you know? A. I don't know, sir.

Q. As a matter of fact, what is Yee Hing Bow's true name?

A. Fong Yen Toy. His true name is Fong Yen Toy.

Q. Do you know his two sons in Hong Kong?

A. Yes, I do.

(Testimony of Kwong Suey Wai.)

Q. What are their names?

A. Fong Shew Hung.

Q. And the other one?

A. Fong Shew Kay. [152]

Q. Do you know where Fong Yen Toy is now or Yee Hing Bow? A. I don't know, sir.

Q. As a matter of fact, are you taking care of his store? A. Yes, sir.

Q. Did he disappear?

Mr. Davis: I am going to object to that as leading.

A. Yes, he did.

The Court: It is leading.

Mr. Schnake: What is that?

The Court: It is leading.

Mr. Schnake: Excuse me.

Q. Have you made any attempts to find him since you last saw him? A. No, sir.

Q. When did you last see him, approximately how many months ago?

A. Two months and about ten days.

Q. Have Immigration officers questioned you as to his whereabouts? A. Yes, sir.

Mr. Schnake: That's all.

Mr. Davis: No questions.

Mr. Burns: I have no questions.

The Court: That's all. Step down, please. That's all.

(Witness excused.) [153]

Mr. Schnake: Next would you call Mr. Fong Gwing Noon.

Your Honor, I have been unable to locate the Government interpreter, and Mr. Gilbert Woo has consented to act as interpreter for this witness, a very short witness.

The Court: Any objection?

Mr. Burns: No objection.

The Court: All right. Swear the interpreter, Mr. Clerk.

(The Interpreter, Gilbert Woo, was sworn.)

FONG GWING NOON

called as a witness by the Government; Sworn, through the Interpreter:

The Court: What is your name?

Mr. Interpreter, you are to repeat the questions in Chinese to the witness and repeat the witness' answers to every question, and no conversation between you and the witness.

The Interpreter: Yes, sir, your Honor.

The Court: We want you to interpret everything he says, please.

What is your name?

Do you understand me, Mr. Interpreter?

The Witness: Fong Gwing Noon.

Direct Examination

By Mr. Schnake:

Q. Is that spelled F-o-n-g G-w-i-n-g [154] N-o-o-n?

(Testimony of Fong Gwing Noon.)

The Court: Mr. Interpreter, go ahead. Say that to him.

A. (Through the Interpreter): Yes.

Q. (By Mr. Schnake): Are you also known as Yee Yat Been? A. Yes.

Q. Under what name did you enter this country?

A. Yee Yat Been.

The Court: You may get the spelling, Mr. Schnake, but I don't and I don't think the Jury does.

Mr. Schnake: All right.

Q. Is that name spelled Y-e-e Y-a-t B-e-e-n?

A. Yes, right.

Q. Can you tell me the name of the person you claimed to be your father when you entered this country? A. Fong Yen Toy.

Q. What was the name that he used as his true name in the United States at that time?

A. Yee Hing Bow.

Q. Did you appear at the Immigration approximately in 1939 to testify on behalf of Yee Yuen Foon? A. Yes.

Q. Did you see that person in the hallway this morning here? A. Yes.

Mr. Burns: I assume you are referring to Jonathan Yee?

Mr. Schnake: Yes, I can have him brought back. Stipulate that is the same person? [155]

The Court: Same person as what, Mr. Schnake?

Mr. Schnake: Same person as the witness Jonathan Yee. May it be so stipulated?

(Testimony of Fong Gwing Noon.)

Mr. Davis: Yes.

Mr. Burns: Yes.

Q. (By Mr. Schnake): Now, what is the true name of Yee Yuen Foon? A. Yee Hall Gay.

Q. And he is the son of Yee Hing Bow?

A. No.

Mr. Schnake: That's all.

Mr. Davis: I have no questions.

Mr. Burns: No questions.

The Court: All right. Step down.

(Witness excused.)

Mr. Schnake: Call Mr. Prather.

E. T. PRATHER

called as a witness on behalf of the Government; sworn:

Direct Examination

By Mr. Schnake:

Q. Mr. Prather, would you state your full name?

A. E. T. Prather, P-r-a-t-h-e-r.

Q. What is your occupation?

A. I am an investigator with the United States Immigration Service. [156]

The Court: A little louder, please.

The Witness: I am an investigator for the United States Immigration Service.

Q. (By Mr. Schnake): Mr. Prather, are you familiar with the regulations and rules regarding the issuance of passports and visas?

(Testimony of E. T. Prather.)

A. Yes, to a certain extent. The issuance of passports is a function of the State Department, but I have had something to do with it.

Q. In the course of your work as an investigator, have you come in contact with the documents that are required for the support of a passport application and the documents that are required for a visa application? A. Yes, I have.

Q. I will show you the affidavits, the affidavit of support executed by Mr. William Fong, on October 17th, 1951, which is a part of Government's Exhibit 6, and ask you is this affidavit of support required for the issuance of a passport?

A. No, that——

Q. For what document is that affidavit required?

A. This is an affidavit that is required by the State Department prior to the issuance of an immigrant visa.

Q. In other words, if Jonathan Yee were making a trip to Hong Kong, would it be necessary for him to have any affidavit of support for the purpose of just making the trip? [157]

A. No, that would not be necessary.

Q. Now, I'll show you a statement of employment signed by William Fong, on October 11, 1951, concerning the alleged employment by William Fong of Yee Yuen Foon and ask you if this employment statement is required as a supporting document for an application for a passport?

A. No, not for a passport.

(Testimony of E. T. Prather.)

Q. For what document is that required as a supporting document?

A. That would be required by the State Department prior to the issuance of an immigrant visa.

The Court: By an immigrant visa, what do you mean: permission to enter the country by a person who is not a citizen of the country?

The Witness: Your Honor, that is a permit issued by the State Department to apply for admission to the United States.

The Court: By a person who is not a citizen of the country?

The Witness: That is correct, yes, sir.

Q. (By Mr. Schnake): Mr. Prather, what document would be issued to a citizen of the United States who was abroad and wanted to come into the United States?

A. It would either be a United States passport or a travel document issued in lieu of a United States passport.

Q. Now, Mr. Prather, in the course of your investigation, did you conduct questioning of Jonathan K. Yee? A. Yes, I did. [158]

Q. At the time that you questioned him, did you or anyone else in your presence ever make any statements to Mr. Yee promising him immunity from prosecution?

Mr. Burns: I am going to object to that as calling for the opinion and conclusion of the witness, whether he did threaten or whether he did promise.

(Testimony of E. T. Prather.)

If we are going to have a conversation, we have to have it all.

The Court: I think you may cross-examine on that when the time comes, counsel. I think he is permitted to go into this.

A. No, he was not promised anything; neither was he threatened.

Q. (By Mr. Schnake): Did you or anyone else in your presence make any statement to Jonathan Yee to the effect that if he co-operated with the Government, he would be given any special consideration on his immigration problems?

A. We did not.

Q. Mr. Prather, in the course of your investigation of this case, did you have occasion to call on Mr. Robert Leonard Levy? A. Yes, I did.

Q. Did you go to his office? A. I did.

Q. With whom?

A. William Moore, an investigator for the Immigration Service, and with whom I work.

Q. Was anyone else present? [159]

A. I believe Mr. Moore and I talked with Mr. Levy, and there was some gentleman there in an adjoining office. He was not present during the conversation.

Q. Would you relate the conversation that you had with Mr. Levy on this first occasion?

Mr. Burns: May we have the date fixed?

Mr. Schnake: Oh, yes, excuse me.

Q. Can you tell me approximately the date of that conversation on that point?

(Testimony of E. T. Prather.)

A. I believe it was the first part of April of this year. I am not certain of the date on that. After I talked with Mr. Levy, he came to your office and made a statement.

Q. That was the same day, then, he was questioned in the United States Attorney's office?

A. Yes.

Mr. Burns: I will stipulate that was April 3, 1956.

The Witness: I believe that is correct, April 3, 1956.

Q. (By Mr. Schnake): Would you relate the conversation that you had with Mr. Levy?

A. Mr. Moore and I went up to Mr. Levy's office and introduced ourselves to Mr. Levy; that we desired to talk with him concerning the case of William Fong and Chin Bick Wah. I believe Mr. Levy told me that he didn't know who I meant by Chin Bick Wah. I explained who Chin Bick Wah was. We had some conversation concerning Jonathan Yee. [160]

Q. Now, regarding Jonathan Yee, did you ask him regarding the divorce action of Jonathan Yee?

A. Yes, I did particularly ask him that question, and he told me that Bill Fong had referred an employee of his to him for a divorce action.

Q. Did he make any statement regarding the relationship of Bill Fong to Jonathan Yee?

Mr. Burns: I don't like to object to leading and suggestive questions, if your Honor please.

The Court: There shouldn't be any occasion for leading and suggestive questions of this witness, counsel.

Mr. Schnake: All right, your Honor.

Q. Can you tell me what Mr. Levy said at that in response to your questions, Mr. Prather?

A. Mr. Levy stated that Mr. Fong had sent an employee of his to him to see about a divorce. He then said that the employee's name was Jonathan Yee.

I told Mr. Levy that during the course of our investigation that it appeared to us that he was mixed up in a case that was a violation of the immigration laws, possibly a conspiracy. Mr. Levy maintained that he was innocent of any such matter, and I further informed Mr. Levy that we were there talking to him as a result of the investigation and that the United States Attorney's office was interested in it, asked him if he would prefer to talk to the United States Attorney rather than to us. [161]

He stated that he would, and he suggested that we go down to the United States Attorney's offices by way of street car. I told Mr. Levy we had a car there, we would be glad to take him over. He rode over to the United States Attorney's office with us.

Q. Now, the following day did you and Mr. Moore go to Mr. Levy's office?

A. Yes, we returned to his office the following day,

Q. Who else was present at that conversation?

A. There were just the three of us, Mr. Moore, Mr. Levy and myself.

(Testimony of E. T. Prather.)

Q. Can you relate the conversation that you had with Mr. Levy at that time?

A. We told Mr. Levy that we were there at his invitation that had been given the prior day to inspect his accounts and his records of clients. He said that he had made some such statement and at that time searched through his desk, took out a book and read some of the entries to us.

Q. Did he allow you examine any of his books?

A. He did not.

Q. Did you ask him if you yourself could examine the books?

A. We did not press that question. We asked him, when we went in, to examine the books, he produced the book in his hand and read to us from the book.

Q. Did you at any time see any of his financial accounts, [162] actually see the entries themselves?

A. We did not.

Mr. Schnake: Your Honor, there is further testimony of this witness that we would like to introduce at a later time in the Government's case in chief in order to present the continuity of the case, and so we would ask the Court that we be allowed to put this witness on again as to other matters at that time.

The Court: All right.

Mr. Burns: May I be permitted to cross-examine this witness?

The Court: You may cross-examine now as to matters which he has testified to and without fore-

(Testimony of E. T. Prather.)

closing further cross-examination, if it is necessary, at a further time.

Cross-Examination

By Mr. Burns:

Q. Mr. Prather, the date of your meeting with Mr. Levy was as a consequence of a statement that was taken in the United States Attorney's office, isn't that corrrect?

A. That's right, yes, sir.

Q. Isn't it a fact, Mr. Prather, that you yourself had some notes of this first meeting with Mr. Levy?

A. Oh, yes, I do have notes on it.

Q. Have you used those to refresh your recollection before you took the stand?

A. Not today. I have looked those notes over in the last [163] several months, Mr. Burns. I have worked on this case for about six months, and I have a lot of notes that I have studied over.

Q. Now, you say you were with Mr. Moore. How was this appointment with Mr. Levy made?

A. I am not certain whether we called Mr. Levy or whether we walked into his office unannounced.

Q. Well, were you in the company of Mr. Moore that morning at your office?

The Court: I don't understand that.

Q. (By Mr. Burns): You went to work that morning as usual, I assume; at your office in the Appraiser's Building, is that correct?

A. Yes, I think so. That is my regular practice to go to the office.

(Testimony of E. T. Prather.)

Q. You were working with Mr. Moore on this case, isn't that correct?

A. No, I think that Mr. Moore and I were not working together all the time on this case. He was working on other cases. However, I am quite certain he did accompany me over to Mr. Levy's office.

Q. Well, as a matter of fact, Mr. Prather, prior to April 3, there had been certain portions of this case presented to the Grand Jury, had there not?

A. That's right, yes, sir. [164]

Q. Had you already testified before the Grand Jury?

A. I believe I testified before the Grand Jury on or about April 18. I am not certain of that date.

Q. Well, you testified before the Grand Jury prior to the time an indictment was returned, did you not?

Mr. Schnake: You mean prior to that day?

Mr. Burns: That is correct.

A. I was before the Grand Jury on, I believe, one occasion only, and if I am not mistaken, it was April 11 or April 18. I believe that it was later than April 3.

Q. Well, the indictment was returned April 11, isn't that correct?

Mr. Schnake: We will stipulate the indictment was returned on April 11th. A. I don't know.

Q. (By Mr. Burns): That was just a week after your first meeting with Mr. Levy, is that correct?

A. That may be right; I don't know, Mr. Burns.

(Testimony of E. T. Prather.)

Q. My question is this, Mr. Prather: At the time that you saw Mr. Levy, you had personal knowledge of the fact that certain phases of this case had already been presented to the Grand Jury, isn't that correct?

A. No, I think that is not correct.

Q. There had been certain people testified, subpoenaed to testify before the Grand Jury prior to April 3? [165]

A. I was in Washington, D. C., from, I believe, February 19 until about April 1.

Q. So you had no personal knowledge on the subject, is that correct?

A. Well, I believe that those dates are correct and during that time I would have no personal knowledge of it.

Q. Now, you don't recall that Mr. Moore, from the Appraiser's Building in his office in that building, called Mr. Levy at approximately 9:30 in the morning of April 3, 1956?

A. He may have, because we talked to Mr. Levy in his office. Now, I believe I have stated that I don't remember whether we made an appointment with him by phone or whether we walked into his office unannounced. I am not certain.

Q. Do you recall whether Mr. Moore told you of the telephone conversation?

A. I have no recollection of that.

Q. Well, anyway, as a consequence of something, you went to Mr. Levy's office, isn't that right?

A. Yes.

(Testimony of E. T. Prather.)

Q. And you arrived there approximately what time?

A. Oh, I think around 10:00 o'clock in the morning.

Q. You drove over from Sansome Street, did you not? A. Yes, sir.

Q. In the company of Mr. Moore?

A. That's right. [166]

Q. Do you recall Mr. Moore told you that he talked to Mr. Levy on the phone and Mr. Levy said come right over?

A. That may have been; I don't recall it.

Q. You were ushered into Mr. Levy's office and met Mr. Levy for the first time?

A. We walked into Mr. Levy's office and Mr. Levy was in his office.

Q. You then told him the nature of your business and the purpose of your visit, is that right?

A. That is correct, yes, sir.

Q. That you were investigating an immigration matter concerning William Fong and his wife, is that correct? A. That is correct.

Q. You, I think, used the expression in direct examination that your investigation revealed that he was mixed up in some matter, is that correct?

A. Yes, I believe Mr. Levy asked me why we were talking to him and we told him that it appeared that he may have been involved in the case in some manner.

Q. Now, what expression did you use, as you

(Testimony of E. T. Prather.)

best recall, he was mixed up or that he was involved?

A. I don't know what the expression was; the meaning was the same. In any event, he wanted to know what we wanted; I told him what we wanted and why we wanted to talk to him.

Q. As a consequence of your conversation, either you or Mr. [167] Moore showed him the original of this letter which is in evidence as Government's Exhibit 3, I believe, is that correct?

A. Yes, I believe Mr. Moore got this letter in Reno while I was in Washington.

Q. He had that file in his brief case, did he not?

A. Yes, sir, I believe he did.

Q. And you showed the letter to Mr. Levy?

A. Yes, sir.

Q. And he told you that he had written the letter? A. That's right, yes, sir.

Q. He told you, did he not, that Jonathan Yee had been an employee of Bill Fong?

A. Yes, sir.

Q. And that Bill Fong had been a long-time client and personal friend of his, isn't that correct?

A. That is right.

Q. And he told you that Jonathan Yee came into his office and related a series of marital discords with his wife, Jean, and wanted to go to Reno and get a divorce?

A. I am not certain about that. I recall that he said that he had talked with Jean Yee on one or two

(Testimony of E. T. Prather.)

occasions. I am not certain that he said anything about Jonathan coming into his office.

Q. How did he tell you, Mr. Prather, that that letter came into the possession of Jonathan [168] Yee?

A. I don't remember that he told us, and neither do I remember that we asked him how the letter came into the possession of Jonathan Yee.

Q. Tell me this, Mr. Prather: Had you interviewed Mr. Rutherford in Reno prior to this time?

A. No, sir.

Q. To your knowledge, had Mr. Moore?

A. Yes, Mr. Moore was in Reno and Mr. Rutherford gave him this file, or loaned it to him, whichever it was, I don't know.

Q. That was prior to the time that you went to see Mr. Levy?

A. Oh, yes, we had this file at that time.

Q. You had talked to Mr. Jonathan Yee a number of times?

A. I have talked to Jonathan Yee many times, yes, sir.

Q. Mr. Jonathan Yee told you that he got that letter from Mr. Levy?

A. I don't believe that I have ever shown that letter to Jonathan Yee.

Q. Mr. Prather, it is your testimony that you don't recall now that you questioned Mr. Levy as to how Mr. Jonathan Yee came into possession of that letter, is that right?

A. No, I don't believe that we did.

(Testimony of E. T. Prather.)

Q. Mr. Prather, can you tell us how long you were in Mr. Levy's office?

A. Oh, I think perhaps 15 minutes. It might be a few minutes [169] one way or the other. It wasn't very long.

Q. Did you ask to examine any file?

A. No, I believe not.

Q. You say Mr. Levy said something about some conversations with Jean Yee, is that correct?

A. Yes.

Q. Now, Mr. Levy told you that he had seen Jean Yee on two separate occasions, and that was after her husband had returned from Hong Kong, didn't he? A. That may be correct.

Q. Did he tell you that on both those occasions that she wanted him to intercede and try to get her husband back?

A. I believe that is correct, yes, sir.

Q. And he told you that what he told her was that he couldn't do anything about getting her husband back, but he could see to it that he supported the child; isn't that correct?

A. That is possibly correct, I am not certain, but there was some conversation about that, Mr. Burns.

Q. You have notes that would indicate what the full extent of the conversation was, do you not?

A. I believe I have no notes on that particular point, if that point came up.

Q. Did you ask Mr. Levy if he had ever threatened Jean Yee? A. No.

(Testimony of E. T. Prather.)

Q. Did you ask Mr. Levy if he had ever threatened Mr. [170] Jonathan Yee? A. No.

Q. Was that question asked in your presence?

A. No, sir.

Q. Now, on direct examination, Mr. Prather, you said that Mr. Levy said he would prefer to give a statement to the United States Attorney.

A. He did.

Q. Is that what your recollection of his statement was?

A. Yes, Mr. Levy appeared to be co-operative and friendly while we were in his office. However, he was quite nervous and seemed to be a little hesitant to talk to us about the matter, and I asked him if he would rather talk to some representative of the United States Attorney's office, inasmuch as he maintained his innocence of any part of this scheme, and he stated that he would and suggested that we go over right now.

Q. Didn't you ask him, or Mr. Moore ask him in your presence, Mr. Prather, if he would be willing to give a statement to the United States Attorney's office?

A. No, I asked—Mr. Moore didn't ask; I asked Mr. Levy if he would prefer to talk with someone in the United States Attorney's office rather than to talk with us about the matter, and he said that he would and suggested we go over right then.

Q. Had you told Mr. Levy at that time that this matter was [171] the subject of a Grand Jury investigation?

(Testimony of E. T. Prather.)

A. I don't know that I mentioned the Grand Jury. I did explain to Mr. Levy some of the points of the case and that suspicion had been directed to him during the investigation.

Q. And when you suggested, as you say, that he might prefer to go to see the United States Attorney, Mr. Levy didn't say first he wanted to see his own attorney, did he?

A. No, sir, he did not. [171A]

Q. As a matter of fact from Mr. Levy's office you called Mr. Schnake, didn't you?

A. I did.

Q. And made arrangements to see if you could come right up then with Mr. Levy?

A. That is correct.

Q. Mr. Levy went in your automobile up to this building on the fourth floor, isn't that correct?

A. That is correct.

Q. You arrived at the United States Attorney's office and left Mr. Levy out in the anteroom and you went in and talked to Mr. Schnake; isn't that correct? A. That is right.

Q. As a consequence of your conversation with Mr. Schnake you then went out and got Mr. Levy and introduced him to Mr. Schnake?

A. I believe that is right, yes, sir.

Q. And then Mr. Schnake made arrangements to take a written statement?

A. As far as I know that is correct.

Q. You and Mr. Moore left, isn't that correct?

A. That is right, yes, sir.

(Testimony of E. T. Prather.)

Q. You have, I assume, read the statement Mr. Levy gave to the United States which consists of some thirty-odd pages? A. I have. [172]

Q. You had that in your file? A. Yes, sir.

Mr. Burns: That is all.

Mr. Davis: I have no questions.

The Court: Any questions?

Mr. Schnake: One question.

Redirect Examination

By Mr. Schnake:

Q. When you were talking to Mr. Levy that first time, do you recall whether or not Mr. Levy told you the name of the person who had referred Jonathan Yee to him when you first asked him [redacted]ut that? A. I do not recall.

Mr. Schnake: That's all.

The Court: You may step down.

(Witness excused.)

Mr. Schnake: Unless Miss Wilbur is here I would prefer, if we might, go to lunch four minutes earlier today, your Honor.

The Court: All right. Take a recess until 1:30 this afternoon. Remember the admonition heretofore given you. 1:30.

(Thereupon, the Court adjourned until 1:30 o'clock p.m. of this same date.) [173]

Tuesday, July 10, 1956—1:30 P.M.

(The following proceedings were had out of the presence of the jury.)

Mr. Schnake: While the jury is coming, I neglected to ask that one question on which we had the legal argument last night of the witness. I imagine that you noticed it. May I put him on for that purpose?

The Court: Yes.

(The following proceedings were had in the presence of the jury.)

The Court: The jury is present, proceed.

Mr. Schnake: Mr. Yee.

JONATHAN K. YEE

a witness recalled to the stand, previously sworn.

Further Direct Examination

By Mr. Schnake:

Q. Mr. Yee, I believed that I had asked you, but I find I had not asked you the question on which ruling had been reserved, and that was at the time you went to the registry of marriages with Chin Bick Wah in Hong Kong, on November 29, 1951, what was your intention as to whether or not you would become her husband?

A. My intention was not——

Mr. Burns: Same objection. I make the same objection as heretofore made on behalf of defendant Levy, your Honor. [174]

(Testimony of Jonathan K. Yee.)

The Court: The objection may be overruled. However, the testimony is limited for the purpose of establishing the intent of this witness.

Mr. Schnake: Very well.

A. My intention was not, in name only.

Q. (By Mr. Schnake): Your intention was not what? A. To become man and wife.

Q. What do you mean by "in name only"?

A. Well, just to marry her to bring her over for Mr. Fong.

Mr. Schnake: Thank you.

Recross-Examination

By Mr. Burns:

Q. Mr. Yee, when you testified in the District Court, in Reno, Nevada, with reference to the conduct of your wife Jean Yee, it was your intention, was it not, to get a divorce from her?

A. Yes, sir.

Mr. Burns: That's all.

Mr. Schnake: That's all.

The Court: You may step down.

(Witness excused.)

Mr. Schnake: Will you call Mr. Wong Foon.

WONG FOON

a witness called by the Government. Sworn. [175]

The Court: State your name, please.

The Witness: Wong Foon.

(Testimony of Wong Foon.)

The Court: How do you spell it?

The Witness: W-o-n-g F-o-o-n.

Direct Examination

By Mr. Schnake:

Q. Do you speak English, Mr. Wong?

A. Little bit.

Q. Do you believe if I speak slowly that you can understand my questions? A. Yes.

Q. All right. If you are unable to understand my questions or to give your answer without an interpreter, will you please tell us so? A. Okay.

Q. All right. Where do you live, Mr. Wong?

A. I live 4016-22nd Street.

The Court: What town?

The Witness: That is the Mission District.

The Court: San Francisco?

The Witness: San Francisco.

Q. (By Mr. Schnake): What is your occupation? What is your job? A. I am a salesman.

Q. Salesman? [176] A. Yes, sir.

Q. Do you know William Fong? A. Yes.

Q. Would you point him out in the courtroom?

Mr. Schnake: Would you stand up, Mr. Fong?

The Witness: Yes.

Q. (By Mr. Schnake): What name do you know him by? A. Fong Wy Sum.

Q. Do you know him by the name of Bill Fong?

A. Bill Fong, yes.

Q. How long have you known Bill Fong?

A. I know him, I think, since 1951.

(Testimony of Wong Foon.)

Q. Now, do you know Jonathan Yee?

A. Yes.

Q. What name do you know him by?

A. Yee Hall Kee.

Q. Is he the man who saw you in the hall just as you walked in the door now? A. Yes.

Q. Do you remember that Jonathan Yee went to Hong Kong? Do you remember several years ago when Johnnie Yee went to Hong Kong?

A. I did.

Q. Did you know that he went to Hong Kong? Had you heard he went to Hong Kong? [177]

A. Yes.

Q. Now, calling your attention to that time, to the summer before Johnnie Yee went to Hong Kong, you remember that time, the summer before Johnnie Yee went to Hong Kong? A. Yes.

Q. All right. In that summer did you have a conversation, a talk with Fong Wy Sum?

A. Yes.

Q. Where did you have this talk with Fong Wy Sum?

A. I don't remember, in his store or in my office.

Q. Where was his store, what street?

A. Stockton Street.

Q. Is that Fong Brothers milk store?

A. Yes.

Q. Where is your office? Where was your office then? A. On Stockton Street, 939.

Q. Right next door, right by the milk store?

A. Yes.

(Testimony of Wong Foon.)

Q. Now, who else was there? Who else was at the conversation, anybody? A. No.

Q. Just you and Bill Fong? A. Yes.

Q. Can you tell me what Fong Wy Sum said?

Mr. Burns: On behalf of defendant Levy we will object [178] to this conversation, if your Honor please.

The Court: What year is this?

Mr. Schnake: This is the summer before Jonathan Yee went to Hong Kong. That would be the summer of 1951, your Honor. That would be after the conversations that have been already testified to as the conversations between Fong, Levy and——

The Court: The objection may be overruled.

Q. (By Mr. Schnake): What did Mr. Bill Fong say?

A. He said he got a girl friend in Hong Kong.

Q. He had a girl friend in Hong Kong?

A. Yes.

Q. What else did he say?

A. He said the girl friends—he send a letter back and forth to the girl friend.

Q. Did he say he sent letters?

A. I didn't hear you.

Q. Did he say he sent letters?

A. The letter back and forth to the girl friend.

Q. What else did he say about her, if anything?

A. He said girl is very nice, he love her, and——

Q. He loved her?

A. Yes, he love her and that he try get her in this country.

(Testimony of Wong Foon.)

The Court: If the jury does not hear any answer please indicate and I will have it repeated for you.

Q. (By Mr. Schnake): Now, do you remember the following [179] summer after—let's put it this way: Do you remember about the time that Chin Bick Wah came to this country? A. Yes.

Q. In the summer after she came here in 1952 do you remember having a conversation with Bill Fong? A. Yes.

Q. Where did you first talk with Bill Fong?

A. I don't remember the date.

Q. No, where was it, in San Francisco or somewhere else? A. In San Francisco, yes.

Q. Where in San Francisco?

A. I didn't remember, in his shop or in my office.

Q. In his shop or in your office? A. Yes.

Q. Was anybody else there? A. No.

Q. What did he say to you?

Mr. Burns: On behalf of the defendant Levy we again make the same objection, if your Honor please.

The Court: The objection may be overruled.

A. And he said he wanted me to go with him to the peninsula.

Q. Wanted you to go with him to the peninsula?

A. Yes.

Q. What did you say? A. I say yes. [180]

Q. Did he say why he wanted to go?

A. Well, he just want to see some—some lady's name, May Jow.

(Testimony of Wong Foon.)

Q. May Jow? A. No, Jean Jow.

Q. Jean Jow? A. Yes.

The Court: Read the last couple of questions and answers please.

(Record read.)

Q. (By Mr. Schnake): Did you go with him down the peninsula? A. Yes.

Q. How did you go? Whose car?

A. In my car.

Q. Now, as you drove down in the car was anybody else with you in the car? A. No.

Q. Just you and Bill Fong? A. Yes.

Q. Did you have a conversation in the car?

A. Yes.

Q. What did Bill Fong say?

Mr. Burns: Same objection, if your Honor please.

The Court: Same ruling.

A. He said about Johnnie Yee with Chin Bick Wah going out to [181] the country.

The Court: Read the answer, Mr. Reporter; read it loudly, please.

(Record read.)

Q. (By Mr. Schnake): Would you tell us what he said about that?

A. He said he don't like that for him, not fair.

Q. He didn't like that?

A. Yes, he don't like that.

Q. It was not fair, did you say? A. Yes.

(Testimony of Wong Foon.)

Q. When he said this was he smiling?

A. No.

Q. What expression could you see on his face?

A. He looks to me very mad.

Q. Did he say he wanted to find Jean Jow?

A. No.

Q. Now, when you got down to the peninsula did you stop at someone's house? A. Yes.

Q. What did William Fong do?

A. We stopped, we stop at May Jow's house.

Q. At May Jow's house? A. Yes.

Q. Who is May Jow, what relation to anybody else? [182-3]

A. I didn't know May Jow. I understand May Jow was Mr. Fong's—Mr. Fong tell me May Jow was Jean Jow's sister.

Q. May Jow is whose sister?

A. Jean Jow's sister.

Q. Jean Jow's sister? A. Yes.

Q. When you talk about Jean Jow, who is she married to, or who was she married to?

A. Jean Jow is Johnnie Yee's wife.

Q. Johnnie Yee's wife. All right. Did you wait for a while out in the car?

A. Yes, I wait for about a half hour in the car.

Q. Then where did you go?

A. Out to Mr.—Mr. Fong call me in the house.

Q. Mr. Fong called you in the house?

A. Yes.

Q. Did you go inside the house? A. Yes.

(Testimony of Wong Foon.)

Q. Who was present?

A. May Jow and Mr. Fong and myself.

Q. Did you hear a conversation between Mr. Fong and May Jow and yourself?

A. Yes. He just talked about Johnnie Yee with Chin Bick Wah running out the country.

Q. Running out? [184]

A. Yes, run out the country and Mr. Fong want to find out—Mr. Fong want to find out where they go.

Q. He wanted to find out where they had gone?

A. Yes.

Q. Okay. What did he say, if anything, about Jonathan Yee, about Johnnie Yee?

A. He said Johnnie Yee do like that way it is not fair for him.

Q. It was not fair for him? A. Yes.

Q. When he said this was he smiling?

A. No.

Q. What expression did you see on his face?

A. I can't remember.

Mr. Schnake: Thank you, that's all.

Cross-Examination

By Mr. Davis:

Q. Mr. Wong, you're presently being investigated by the Immigration Service, are you not?

A. Yes.

Q. Is it not a fact that the Immigration Service claims that you're in this country illegally?

(Testimony of Wong Foon.)

A. I don't understand.

Q. Doesn't the Government say that they are going to deport you? [185] A. Yes.

Q. Didn't you make a statement that it was Mr. Fong who squealed on you? A. No.

Q. You haven't told people that it was Fong who squealed, told the Government about you?

A. I didn't understand.

Q. Is it not true that you told someone else that it was Bill Fong who got you in trouble with the Government? A. Did somebody tell me?

The Court: If you desire to use the interpreter, you may.

Mr. Davis: I think we'd better, your Honor.

The Court: All right, fine. Mr. Interpreter.

Mr. Schnake: Mr. Gilbert Woo, will you come up, please?

(The following question was put to the witness through the Interpreter.)

Q. (By Mr. Davis): Is it not true that you told someone else that Bill Fong squealed on you to the Government, or got you in trouble with the Government? A. No.

Mr. Davis: That's all.

Mr. Burns: No questions.

The Court: That is all, step down.

Mr. Schnake: You are excused, Mr. Wong.

(Witness excused.) [186]

Mr. Schnake: At this time I believe we have a stipulation as to the authenticity of the question and answer statement taken from Chin Bick Wah on December 21, 1955, copy of which statement has been furnished previously.

Mr. Davis: So stipulated.

Mr. Schnake: As this time, your Honor, we will offer in evidence the question and answer statement taken of the defendant Chin Bick Wah.

Mr. Burns: On behalf of the defendant Levy we will object to its being admitted in evidence as against him. As I recall the date of the statement is sometime in December of 1955, long after the conspiracy alleged in the indictment had terminated and that it could not be used as a declaration of a co-conspirator in the furtherance of a conspiracy.

Mr. Schnake: Your Honor, we would urge that the statements of this witness were in furtherance of the aim of conspiracy which has been previously stated, and that was that in the event of any questioning by Immigration they would see to it that Chin Bick Wah could remain in the country by getting together and giving stories that all matched.

The Court: What was the date of the statement?

Mr. Schnake: December 21, 1955. The indictment alleges overt acts, in fact an overt act of this nature as late as April 6, 1956.

Mr. Davis: I make the same objection on behalf of the [187] defendant William Fong.

Mr. Burns: I might point out to your Honor with reference to the overt acts that Mr. Schnake

mentioned, that your Honor's ruling this morning was that the declarations of co-conspirators, if they were any in those conversations, were limited to the co-conspirator involved in the declaration, and I believe that this statement, December 21, 1955, by Mrs. Fong should come under the same ruling.

Mr. Schnake: Your Honor, might I state on that point that this particular statement of Chin Bick Wah is different from any of the overt acts, other overt acts in this particular: As to her the prime object was to get her into the country and allow her to remain, and it was understood that she would be questioned by Immigration both at the time she entered and could be questioned at later times.

Now, here this is more than a declaration, this is the verbal act of this defendant and co-conspirator designed to accomplish the purpose of concealing the original illegal entry and maintaining that she still had lawful status and a right to remain in the United States.

This is completely in line with the most central purpose of the conspiracy, and certainly one of the objects of this conspiracy was to give such false testimony to the Immigration Service as might be necessary to keep her here.

The Court: The objection may be [188] overruled.

Mr. Schnake: Thank you.

The Court: What do you desire to do about it?

Mr. Schnake: I would like to read portions of it to the jury at this time to correlate it with certain

of the testimony already given and testimony to be given this afternoon, your Honor.

The Court: It is understood that counsel may read any portions, either side, that they may desire at any time.

Mr. Davis: Yes, your Honor.

The Court: Exhibit 12.

(Thereupon, the foregoing question and answer statement of Chin Bick Wah was marked and introduced into evidence as Government's Exhibit No. 12.)

Mr. Schnake: Reading to you from Government's Exhibit 12, the statement of Chin Bick Wah at the Immigration and Naturalization Service in San Francisco on December 21, 1955, the questioning conducted by Mr. E. T. Prather, Chin Bick Wah the person being examined, and present at that examination were attorneys Z. V. Jackson, appearing for Chin Bick Wah, and the interpreter Francis Leo.

Mr. Prather to the witness:

"You are advised that I am an investigator of the U. S. Immigration and Naturalization Service and desire to question you under oath regarding your right to be and remain in the United States. Any statements made [189] by you must be voluntary and may be used by the Government as evidence in any deportation or criminal proceedings.

"Are you willing to make such a statement freely and voluntarily under oath?

"A. I will reply to those questions that I have knowledge of.

"Q. If at any time you fail to understand the interpreter or meaning of statment or question during this proceeding, if you make it known, I will explain it to you. Do you undestand?

"A. Yes."

The Witness is sworn and states her name.

"Q. By what other names have you ever been known?

"A. Sometimes I have also written my name Helen C. Chin for the reason that I have difficulty writing the initial 'B.'"

She gives her address and descriptive data.

"Q. Have you been outside of the United States since you were admitted at Honolulu on March 15, 1952? A. No.

"Q. Where did you first live when you came to the United States in 1952?

"A. I lived in a hotel on 8th Street in Oakland—I believe it was known as the Fremont Hotel. [190]

"Q. How long did you live at that address?

"A. My husband and I lived there several months—it was less than a year. We lived there until we went to Seattle.

"Q. When did you go to Seattle?

"A. I went to Seattle in 1952, the year I came. It was during the period when Seattle had the Fair.

"Q. How long did you remain in Seattle?

"A. I was there only a few days and came back with my husband.

"Q. Where did you live then?

"A. I then lived at the Fremont Hotel again. I lived there quite a few months up until the following year.

"Q. What is your marital status?

"A. Married.

"Q. How many times have you been married?

"A. Twice.

"Q. To whom were you first married?

"A. The first time I was married in Hong Kong in November or December of 1951, to Yee Ngoon Foon, also known as Johny Foon Yee. My second marriage was in San Francisco to William Fong on October 1, 1953.

"Q. How was the first marriage terminated?

"A. The first one was terminated by [191] divorce.

"Q. On what date?

"A. It was on July 18 or August 18, 1953, that I was divorced.

"Q. Where did that divorce action take place?

"A. Reno, Nevada.

"Q. Do you know where Yee Ngoon Foon, or Johny Foon Yee is now?

"A. I am not sure where he is now.

"Q. Do you know how many times your husband, William Fong, has been married?

"A. I only know of this marriage to me.

"Q. When did you first become acquainted with William Fong?

"A. In San Francisco—I don't remember the time.

"Q. Did you ever receive any letters from William Fong during the time you resided in Hong Kong?

"A. When I was in Canton City I was taking care of the wife of a Lee family man. This man mentioned that it was quite difficult work to be a nurse in China and I mentioned that I had thought of coming to the United States, that perhaps he could introduce me to someone. He introduced me to William Fong and we began to correspond.

"Q. Are you acquainted with Gee King Yip?

"A. I am not clear as to that name. Where would I [192] know him?

"(Investigator shows photograph.)

"Q. I will show you a photograph of Gee King Yip from her file No. 2990855, and ask if it isn't true that you know this woman to be the first wife of William Fong?

"A. I am not able to identify people very well from pictures.

"Q. Do your recall having any conversations with the first wife of William Fong prior to the time you were divorced from Johnny Foon Yee? [193]

"A. I don't remember.

"Q. Isn't it true that you do know that William Fong was married during the time you were first in the United States from 1952 to 1953?

"A. At that time I wasn't clear as to whether he was married or not.

"Q. Were you in Reno during the latter part of October, 1952, with William Fong when he divorced his first wife, Gee King Yip? A. No.

"Q. Did you and William Fong have one or more talks about his divorcing his first wife prior to the time that he was divorced during October of 1952? A. No.

"Q. Did you have anything to do with William Fong's divorcing his first wife?

"A. No, I wasn't aware and I did not interfere in that marriage.

"Q. Did you and Gee King Yip, first wife of William Fong, have an argument during the latter part of 1952 that caused the divorce of William Fong and his wife? A. No.

"Q. Isn't it true that you do know that [194] William Fong was previously married to this woman and that he was divorced from her shortly prior to the time that you and he were married?

"A. I wasn't very clear about that.

"Q. Did you know if William Fong was married prior to the time that you and he were married?

"A. I didn't question him about such matters.

"Q. Did he inform you that he had been married to Gee King Yip?

"A. I don't remember.

"Q. Isn't it true that Gee King Yip told you that she was his wife and she wanted you to leave him alone?

"A. No, I never heard any statement like that.

"Q. I believe you stated that you were a nurse in Canton, China. Is that correct? A. Yes.

"Q. Did you try to come to the United States as a nurse?

"A. I did have that thought.

"Q. Were you at the American Consulate to make application to come to the United States as a nurse?

"A. Yes, I did make application to come as a nurse—to study.

"Q. When was that? [195]

"A. This was during 1948 or 1949.

"Q. At what Consulate did you make application? A. In Hong Kong.

"Q. What name did you use at that time?

"A. Chin Bick Wah.

"Q. Are you quite positive that you used the same name at the Consulate in 1948 when you applied to come to the United States as a nurse as you did when you applied for an immigration visa to come to the United States in 1952?

"A. I have always used only one name—Chin Bick Wah.

"Q. Are you acquainted with Yee Hing Bow?

"A. I have heard my husband mention that that was his father—that is, Yee Ngoon Foon, my first husband's father.

"Q. Did you write a letter from Hong Kong to William Fong in San Francisco stating that you were coming to the United States to be his wife?

"A. No.

"Q. Was it agreed between you and William Fong prior to the time that you came to the United States that you were coming here to be his wife?

"A. I did not have that intention. My intention was to come here to go to school and learn nursing.

"Q. Did William Fong write a letter to you telling [196] you that he was making arrangements to

bring you to the United States as the wife of Yee Yuen Foon? A. No.

"Q. Are you quite certain that you do not know whether William Fong was married prior to the time you became married to him?

"A. I didn't ask him about that, nor was I particularly attentive to that question.

"Q. Did you ever live at 1041 Washington Street, San Francisco?

"A. I didn't live there. I used that as a mailing address.

"Q. Do you know anyone who lives at that address now?

"A. I don't know. My first husband, Yee Ngoon Foon, gave me that address as a mailing address.

"Q. Have you ever visited anyone at that address? A. No.

"Q. Isn't it true you visited your monther-in-law, Yee Fong Shee, at 1041 Washington Street, in San Francisco?

"A. You mean my present mother-in-law?

"Q. And her name in Yee Fong Shee—is that correct? A. Yes.

"Q. Will you please answer the previous question?

"A. It was after I married William Fong that I [197] went to see her.

"Q. Is it true that you have visited with Yee Fong Shee at Apartment 6, 1041 Washington Street, on a number of occasions?

"A. No, I have never been up to Apartment 6. My mother-in-law has always come down to Fong Brothers on Stockton Street to see me.

"Q. I believe, as the record now stands, that you state that you have never been in the apartment of your mother-in-law at 1041 Washington Street. Is that correct?

"A. I don't remember now of having gone there.

"Q. Have you ever had any trouble with your memory?

"A. Ever since the Japanese War when I was frightened and hurt my head during bombing raids, I have not been any too well. If given an opportunity to think slowly, I am able to remember, but when asked for an immediate answer, I am unable to reply sometimes

"Q. Do you have any children? A. No.

"Q. Do you own any real estate property in the United States?

"A. This house that we are now living in is owned in the name of my husband and myself.

"Q. Did you formerly live at 596 MacArthur Boulevard, Oakland? [198] A. Yes.

"Q. Was that house also owned in part or in whole by you?

"A. A portion of the cost of that house was paid by me and a portion by William.

"Q. Just what proportion or what per cent of the amount was paid by you?

"A. The down payment on the house was $6,500.00. I paid $2,000.00.

"Q. Have you understood all of the questions that have been asked you here today?

"A. Yes.

"Q. Do you have any further statement you

would like to make at this time? A. No.

"Q. Will you please sign the recorder's notes to indicate that you were present here today?

"A. I am unable to sign that book as I am unable to read what is on there.

"Q. Have all the statements you have made today been true and correct to the best of your knowledge?

"A. Those answers which I have given which I personally know about, are true." [199]

Mr. Schnake: Call May Jow as the next witness.

Instead of May Jow, the next witness will be Roger Lee.

ROGER CHARLES LEE

called as a witness on behalf of the Government, sworn:

The Court: State your name, please.

The Witness: Roger Charles Lee.

Direct Examination

By Mr. Schnake:

Q. Where do you live, Mr. Lee?

A. 1240 Jackson.

Q. What is your occupation?

A. Carpentry.

Q. Are you acquainted with the defendant William Fong? A. Yes.

Q. Would you point him out in the courtroom?

A. Sitting there with glasses.

Q. All right. Indicates the defendant Fong Wy Sum.

(Testimony of Roger Charles Lee.)

Mr. Burns: I trust he doesn't mean me, your Honor.

The Court: You took them off very quickly.

Q. (By Mr. Schnake): Mr. Lee, were you formerely married to a sister of Mr. Fong's?

A. Yes.

Q. What was her name? A. Grace.

Q. How long were you married to her?

A. About seven years, I guess. [200]

Q. When were you and she divorced?

A. I don't remember. About four years ago.

The Court: Keep your voice up, please.

The Witness: About 1950, I guess, 1949 or '50.

Q. (By Mr. Schnake): About 1949 or '50. Now, Mr. Lee would you speak very carefully and distinctly so that all the people in the Jury can hear you? A. All right.

Q. During the time that you were married to Mr. Fong's sister, did you have occasion to see Mr. Fong at various family affairs? Did you see him at family get-togethers? A. Mr. Fong?

Q. Yes. A. Yes.

Q. Did you work with and for Mr. Fong for a period of time? A. Yes.

Q. How long?

A. Oh, off and on for about seven years, I guess, not counting the time in the army. I came back over weekends and furloughs.

Q. When did you last work for William Fong?

A. I think it was in September of 1947.

Q. Now, do you recall having a conversation in

(Testimony of Roger Charles Lee.)

about 1947 with William Fong regarding a picture?

A. A picture? [201]

Q. A picture that he showed you? A. No.

Q. Do you recall William Fong having a discussion with you in about 1947 regarding a girl in China?

A. Well, he was always talking about it, kidding about it.

Q. Can you recall a particular conversation while you were still working in the milk store with William Fong?

A. No, not particularly. He was always kidding around; I was his brother-in-law, just joking.

The Court: A little louder. I don't hear you.

The Witness: Always talking about that, kidding around, I mean.

Q. Where did you have this conversation when you were kidding around with him?

A. Oh, it would be probably at the store or home.

Q. At the store, where is that?

A. The milk store, 935 Stockton.

Q. Can you recall anyone being present at such a conversation that you have just described?

A. No, because I mean it is just sort of a, oh, I don't know, just having some fun, when I get in an argument with his sister, "Man, I am going to get another wife myself," something like that. Nothing serious.

Q. I am referring, Mr. Lee, to a particular conversation with William Fong regarding any girls in

(Testimony of Roger Charles Lee.)

China. Did you have [202] such a conversation with him?

A. No, not seriously, no. Maybe it was mentioned, not actually coming down and sitting down and talking things over about a certain girl, or anything like that.

Q. Mr. Lee, did you appear before the Grand Jury in this matter, testify before the Federal Grand Jury? A. Yes.

Q. And to refresh your recollection, do you recall——

Mr. Burns: I am going to object, before Mr. Schnake goes any further, if he intends to impeach his own witness——

Mr. Schnake: This is not impeachment.

Mr. Burns: Unless he lays some foundation and a claim of surprise, likewise, I would like to point out, your Honor, that he is apparently searching for a conversation in 1947, and insofar as the Defendant Levy is concerned, the conspiracy alleged in the indictment commenced on or about January 1, 1950.

Mr. Schnake: Conduct on the part of the Defendant William Fong would be binding certainly as to that defendant, not as necessarily in furtherance of conspiracy, but indicating a common scheme or plan here. This is not a conversation regarding this particular woman Chin Bick Wah, but yet a separate matter, and it is going to be offered for that purpose, your Honor, and it might well not be binding against the Defendant Levy. That's up to your Honor. [203]

(Testimony of Roger Charles Lee.)

The Court: It is not to be admitted against the Defendant Levy.

Mr. Burns: Thank you.

The Court: This conversation in 1947.

Where were you born?

The Witness: San Francisco.

The Court: I suggest that if you are going to refresh his recollection, you show him any testimony you desire to have him look at.

Mr. Schnake: Thank you, your Honor.

Q. I will show you, Mr. Lee, a transcript of certain testimony and ask you if this refreshes your recollection? A. Yes.

Mr. Davis: Before the witness answers, may I see what you are showing the witness?

The Court: Has he read it?

Mr. Davis: I don't think so.

Mr. Schnake: He has completed it.

The Court: Let him read, then first indicate by page and line what you are asking him to read.

Mr. Schnake: Indicating from line 15 of page 67 of the Grand Jury transcript through line 13 of page 68 of that transcript. A. Yes.

Mr. Davis: Has he read it? [204]

Mr. Schnake: Yes.

Q. Mr. Lee, having shown you that transcript, I will ask you if that refreshes your recollection as to whether or not William Fong ever showed you a picture of a girl allegedly in China?

A. Yes, I have seen the picture.

Q. Do you know approximately when that was

(Testimony of Roger Charles Lee.)

he showed you the picture, how long before you left his employment?

A. Must have been—it was before '47, because in 1947 we weren't on good terms, and must have been before that.

Q. Was it after you returned from the war?

A. I think so, yes.

Q. When did you return from the service?

A. '46, February 14th.

Q. So that it would have been between February, 1946, and the year 1947, is that right?

A. I think so, because—I mean, it could have been on week ends or furloughs that I have come back, it could have been, I am not sure, but I would say it was before '47.

Q. Before '47. Now, who else was present when he showed you this picture?

A. I don't remember if anybody was present or not.

Q. Where did he show you the picture?

A. I think it was in the milk store.

Q. At 935 Stockton Street? [205] A. Yes.

Q. What was this picture of? A. A girl.

Q. What did he say about that picture?

A. Nothing. "What do you think of her?"

The Court: Said what?

The Witness: "What do you think of her?" I said, "She is cute and young." That's all.

Q. (By Mr. Schnake): What did he say about her?

A. He didn't say much. I asked—I think I was

(Testimony of Roger Charles Lee.)

kidding, "Why don't you fix me up?" something like that. We were always fooling around in the store.

Q. Showing you that same Grand Jury transcript, I will ask you if it refreshes your recollection as to what was said at that conversation?

A. Yes.

Mr. Davis: Make the same request again, your Honor, before he answers.

Mr. Schnake: We are reading from line 8 of page 68 of the Grand Jury transcript.

Q. Now, does that refresh your recollection as to what was said in that conversation regarding the picture?

A. Well, I know he said the girl's in China or from China—I mean, you could tell it was the old photographs, old pictures from China. He just said that, asked me what I thought of her, [206] and I said she was cute and and so forth, nothing like—nothing said about bringing her over or marrying her or anything serious, just for me to look at it, wanted my opinion.

Mr. Schnake: At this time, your Honor, we will claim surprise as to this witness on the basis of the Grand Jury testimony previously given.

Q. Mr. Lee, have you talked with me previous, or since you gave your Grand Jury testimony, have you talked with me about the testimony you were going to give to this Grand Jury?

A. Talked to you?

Q. Yes. Did you inform anyone from the Im-

(Testimony of Roger Charles Lee.)

migration and Naturalization Service, or any other government agent, that you were going to testify to anything different than what you had said to the Grand Jury? A. No.

Mr. Schnake: On that basis, your Honor, we are claiming surprise and ask the right to impeach this witness by reading into the record his Grand Jury testimony.

Mr. Burns: I assume that none of this testimony is going in or being offered as against the Defendant Levy.

Mr. Schnake: As to these particular points, that is correct.

Mr. Burns: Thank you.

The Court: All right.

Mr. Schnake: Reading from the Grand Jury transcript, [207] page 67, line 15:

"Q. Did Fong ever talk to you about the particular case of Chin Bick Wah? A. No.

"Q. Did he ever show you a picture of a woman he wanted to bring from Hong Kong?

"A. I think I saw at least one that I remember.

"Q. He showed it to you? A. Yes.

"Q. About when was that, would you say?

"A. Let's see. That is a long time before I left there.

"Q. Before you left?

"A. Yes, after we left on account of the partnership, naturally——

"Q. You didn't see him much of him after that?

"A. That's right.

(Testimony of Roger Charles Lee.)

"Q. So it would have been some time prior to 1952 that he showed you a picture?

"A. A young girl.

"Q. Of a girl he wanted to bring from China?

"A. Yes.

"Q. Can you recall where it was he showed you the picture? A. Milk store. [208]

"Q. Do you recall who else was present?

"A. I doubt if anybody was."

Q. (By Mr. Schnake): Now, Mr.——

Mr. Davis: I submit, your Honor, that there is no impeachment here.

The Court: Well, there is no question pending before the Court. Frame your question and then you may object to it.

Q. (By Mr. Schnake): Now, did you give these answers in response to these questions before the Grand Jury that have just been read to you?

A. I guess so; it is there.

The Court: What?

A. I guess so. I mean, I haven't said anything different. I mean, like the questions you asked me now. You asked me if there was any conversation; there was no conversation, only knowing the girl was from China, he asked my opinion. I mean, I don't follow the difference in what I answered and what you read there.

Q. (By Mr. Schnake): Mr. Lee, I will ask you, at this time: Did William Fong, or did he not, tell you in this conversation that this was the girl he wanted to bring from China?

(Testimony of Roger Charles Lee.)

A. I knew that, yes. He said——

Q. You say you knew that. Did he say that to you?

A. He might have. If you asked me to swear on it, I wouldn't remember. I mean, it's taken for granted the girl is from [209] China, he wanted me—he asked me for my opinion.

Q. Well, now, my question, Mr. Lee, is: Did he tell you that that was a girl he wanted to bring from China?

A. Might have been; I don't remember. You see, it is pretty hard, when you're talking in Chinese, to interpret that into English. You don't come out and interpret that word for word.

Q. Now, Mr. Lee, do you recall having a conversation while you were still working at the milk store and after you returned from the Army in which William Fong talked about the subject of an obligation owed by Johnny Yee?

A. Obligation?

Q. Yes. First of all, answer yes or no: Do you recall hearing a conversation about that subject in which William Fong took part?

A. Yes. But——

Q. When was that, as best you can recall?

A. Well, like I told the Grand Jury before, obligation in Chinese—I mean, it could be obligation as to the age, respect for——

Q. I am asking you, Mr. Lee, when did the conversation take place?

A. Must have been before 1947.

(Testimony of Roger Charles Lee.)

Q. After February of 1946, when you returned from the Army?

A. No, I think it was—let's see, I think it was during— [210] it could have been one of the furloughs or week ends, because I was only stationed at Sacramento for a couple of years and I got home all the time.

Q. When was the period of time that you were on furlough?

A. Gee, I don't know. Get a furlough once a year, and on the weekends I come back. It was before '47, that is all I can remember.

Q. How much before '47?

A. That I can't swear; I don't remember.

Q. Where did this conversation take place?

A. Milk store, I guess.

Q. Who was present?

A. I don't remember.

The Court: I don't hear you.

A. I don't remember. Like I told you, that obligation——

The Court: Just a moment. Was there anybody present besides Mr. Fong and you?

A. I guess Johnny was. I mean, it's—when it comes to those words, he states those to me, too, but then it isn't because I owe him anything; it's because he is older and they say that in Chinese.

Q (By Mr. Schnake): Mr. Lee, would you just answer the question: Who else was present? Is it your belief that it was you and William Fong and

(Testimony of Roger Charles Lee.)

possibly Jonathan Yee, is that what you [211] stated?

A. Possibly; I don't remember right.

Q. All right. What, if anything, did William Fong say about that subject?

Mr. Burns: Might I enquire through the Court if Mr. Schnake is offering this against the Defendant Levy?

Mr. Schnake: Your Honor, I would think that the statements of William Fong as to the fact of the relationship would be binding against all of the defendants, because of the fact that it isn't a statement in furtherance of the conspiracy, but a declaration as to certain of the facts here of relationship and obligation, so that it would be our position, it would be binding on all three defendants.

The Court: The testimony is not admitted against the Defendant Levy.

Mr. Burns: Thank you, your Honor.

Q. (By Mr. Schnake): What did William Fong say?

A. It's hard to say it in English. I mean, I can say it in Chinese and have somebody interpret it.

Q. You speak the English language?

A. Yes, but then that was said in Chinese and you can very easily misinterpret it when you say it in English, because there are so many meanings in Chinese when you say "obligation," and that was used, the Chinese word was used.

The Court: You just say what was said. Say in English what was said in Chinese. [212]

(Testimony of Roger Charles Lee.)

A. Can't I say it in Chinese and have it interpreted?

The Court: You say it in English what was said in Chinese.

A. (Speaking in Chinese.) I wouldn't know how to interpret it. Is there some interpreter here?

Mr. Schnake: Your Honor, the witness claims, and I can't argue that he doesn't, he is unable to translate a particular word from a Chinese conversation into English. I would respectfully request for that particular word an interpreter be used.

The Court: Just one word you can't translate, is that right?

The Witness: That's right, sir.

The Court: All right, let's get the interpreter.

(Interpreter and witness speaking in Chinese.)

The Interpreter: Well, the direct interpretation would be "He don't give the face to me." That means "He doesn't respect me," something like that.

Mr. Schnake: He doesn't—what would be the literal translation, Mr. Woo?

The Interpreter: He doesn't give face.

Mr. Schnake: He doesn't give face to me?

The Interpreter: Yes. Face means respect.

Mr. Schnake: Respect.

The Court: He was referring to Jonathan Yee, is that right? [213]

The Witness: Well, he said that to me, too.

(Testimony of Roger Charles Lee.)

Q. (By Mr. Schnake): Now, in that conversation, was anything said regarding anyone being grateful or ungrateful to anyone else?

A. Well, like the Chinese word, it can mean that, too, ungrateful. "You don't give me face; you don't give me any respect." That is why it is so hard to interpret some of the words, and I don't have too much schooling in Chinese.

Q. Now, at that conversation, was there anything said about anyone's entry into this country?

A. No. You mean threatening Johnny or something like that?

Q. No, I am asking you whether or not there was anything said at this conversation regarding an obligation growing out of bringing someone into the country?

A. No, not as much, no, nothing like that.

Q. Mr. Lee, I will show you the Grand Jury transcript, page 64, and ask you if this question, starting at line 4, on page 64, and the answers down to page 11—or line 11 of that page, refreshes your recollection on this subject.

Mr. Davis: May I see that, also?

Mr. Schnake: Yes, you may, Mr. Davis.

The Witness: Wait a minute——

The Court: Just read that to yourself.

Q. (By Mr. Schnake): Read that to yourself and I will ask you if that refreshes your recollection. [214]

(Witness reading.)

(Testimony of Roger Charles Lee.)

Q. (By Mr. Schnake): Does that refresh your recollection? A. Uh-hmm.

Q. I will ask you, do you recall any discussion at the time and place that you have indicated where William Fong said anything about an obligation growing out of bringing him into this country?

A. I think what—it was known to me that Bill paid for Johnny's expenses to bring him over to this country, and when he said obligate—or that Chinese word—I knew that probably that is what he meant.

In other words, that wasn't said by him when he argued; I mean, when he said that to him, but I understood it and knew it was that way. He didn't come out and actually say it in words, this (speaking in Chinese), and I took it for granted that meant that.

Q. Now, in the same period of time when you were still working at the milk store and after you returned from the Army, did you have some conversation with William Fong about a desire to divorce his wife and marry an 18-year-old?

A. You mean William Fong wants to divorce his wife?

Q. Did you have a conversation with William Fong on that subject, with William Fong?

A. Yes.

Q. Where did that conversation take [215] place?

A. I wouldn't know; probably at the store. Always kidding around about that.

(Testimony of Roger Charles Lee.)

Q. Is that your best recollection of where the conversation took place?

A. Yes, must be at the store, because we are very seldom home, spent most of the time in the store.

Q. Can you designate the time any clearer than the period of time I have mentioned?

A. Before '47?

Q. Well, and after your return from the Army.

A. I don't think that was—I mean, that was unimportant to me and I just don't remember.

Q. Do you recall who else was present when you had that conversation? A. No, I don't.

Q. What did he say about that subject?

Mr. Burns: On behalf of the Defendant Levy, we will object to this.

The Court: The objection may be sustained as to the defendant Levy.

The Witness: What is that?

Q. (By Mr. Schnake): Go ahead and answer the question. A. What is it?

Q. What did he say on that subject in that conversation?

A. Well, probably worded like, maybe get a younger wife, get [216] a younger wife and probably have a boy in the family, something like that.

Q. He made a statement to that—those are the words, as best you can recall?

A. Best as I remember, yes.

Q. What did you say to him when he said that?

(Testimony of Roger Charles Lee.)

A. I was kidding around with him, I told him he was too old. That's about all.

Q. How many conversations did you have with William Fong if any, regarding a divorce from his wife, Gee King Yip?

A. Well, actually I don't remember, because we, when you're working together, you are always kidding around, oh, I think I will get another wife, every time get in an argument, oh, I think I will get a younger wife, or something, but nothing real serious. We never had any serious talk together, if that is what you mean. Always have remarks, the old lady's yelling too much, or something; I think I'll get another wife.

Q. I didn't hear you.

A. I said, like get into an argument or something.

Q. My question was: How many conversations did you have with him about that subject?

A. Conversation with him on it? I don't think we actually have any conversation; there were remarks made. We don't sit down and talk it over.

Q. Do you have a recollection of a conversation with William [217] Fong regarding the fact that he had not had a son? A. Yes.

Q. When did that conversation take place, when was that remark made? A. I don't know.

Q. As best you can recall. Was it before you left the milk store? A. Oh, yes.

Q. Was it after you returned from the Army?

(Testimony of Roger Charles Lee.)

A. It could have been way before that when remarks like that were made.

Q. I am asking you about a particular remark to that effect that you recall?

A. No, I don't recall.

Mr. Schnake: The following questions and answers, I will state, your Honor, in accordance with your Honor's previous ruling, will be offered against the Defendant William Fong only.

Q. Mr. Lee, were you acquainted with William Fong prior to the time you went in the Army in the early 1940's? A. Oh, yes.

Q. At that time was he living with his own wife, Gee King Yip? [218]

Mr. Davis: I will object to that, your Honor, as being incompetent, irrelevant and immaterial. I don't know what that has to do with this case.

Mr. Schnake: Being offered to show, your Honor, a long-standing desire to divorce the wife and the fact that he was living with another woman for a long period of time, a desire to have another woman living with him.

The Court: I think it is too remote.

Mr. Schnake: Too remote? All right. That's all.

The Court: Any questions?

Cross-Examination

By Mr. Davis:

Q. Mr. Lee, you originally worked for Bill Fong as an employee, is that correct, first worked for him? A. Yes.

(Testimony of Roger Charles Lee.)

Q. And then there was a period later, was there not, when he turned the business over to you and to Johnny Yee and to his brother while he went away for about ten months or a year?

A. Yes.

Q. You ran a portion of the business, is that correct? A. Yes.

Q. When Mr. Fong came back, there was some dispute about that, wasn't there? A. Yes.

Q. The way the business had been run?

A. Yes. [219]

Q. Do you have an argument? A. Yes.

Q. And then you left, is that correct?

A. Not then. It was—wait a minute. I don't recall when they went away. Can you refresh my memory on the year they went away?

Q. Yes. That was in 1947, after you came back from the Army.

A. Then I must have left right after that, right after they came back.

Q. In other words, you did have an argument when Mr. Fong came back and found—he objected to the way you and the others had been running the business?

A. Not so much an objection on the way we ran the business. Can I explain that?

Q. Yes.

A. I mean, I don't want—when he left the retail routes was given to us, to Johnny and I, the retail, and Johnny and Benton had the milk, butter and eggs and the bar of orange juice, and Bill had the

(Testimony of Roger Charles Lee.)

restaurant and the store. Then during the time they left, we increased, John and I increased the business over 50 per cent, by the time they came back, and when he came back and Benton lost money on his deal, so Bill wanted to tie it all up again and I got kind of hurt because we worked so hard building the business up in those few months. [220]

Q. And you left as a result of that?

A. Yes.

Q. You were not then on friendly terms with Bill Fong? A. Not on friendly terms, no.

Redirect Examination

By Mr. Schnake:

Q. Do you have any animosity toward the Defendant William Fong now? A. No.

Mr. Schnake: That's all.

The Court: You may step down. Witness excused.

Mr. Schnake: Ruth Wilbur.

RUTH WILBUR

called as a witness on behalf of the Plaintiff, sworn:

Direct Examination

By Mr. Schnake:

Q. Sate your full name, please.

A. L. Ruth Wilbur.

The Court: What is the first name?

The Witness: Initial L.

(Testimony of Ruth Wilbur.)

Q. (By Mr. Schnake): What is your occupation, Miss Wilbur?

A. Secretary and office manager.

Q. For what law firm?

A. Jackson and Hertogs.

Q. Was a subpoena issued to bring with you the records regarding the visa application of Jonathan Yee on behalf of Chin Bick Wah?

A. Yes. [221]

Q. You have that record with you?

(Witness producing.)

Q. Miss Wilbur, is this the entire record you have maintained on this particular matter that was handled by the law firm? A. Yes.

Q. I notice the notation "No file" on the top of the card. A. That is correct.

Q. Does that indicate no file was actually made up?

A. Well, there is no file at the present time. There may have been a few notes, but they were destroyed.

Q. I see. Now, on this record I see notations.

Mr. Burns: Pardon me, your Honor, before he should read any portion of the record, it should be identified and offered so that proper objection can be made.

Mr. Schnake: Well, your Honor, in order—excuse me. In order to make the proper foundation for its admission in evidence, I was going to ask some questions about——

(Testimony of Ruth Wilbur.)

Mr. Burns: Shouldn't be reading from the document.

Mr. Schnake: All right, I will refrain from reading.

Q. Did the law firm for which you were employed handle the visa application of the person Yee Yuen Foon, also known as Johnny K. Yee?

A. Apparently not.

Q. What is that? [222]

A. Apparently not.

Q. Did you prepare the actual visa application?

A. I don't believe so, but I am not positive, if there had been one prepared.

The Court: A little louder.

The Witness: I believe that if we had prepared it, a copy would have been retained, I wouldn't have destroyed it.

Q. (By Mr. Schnake): Can you tell me from your records what the law firm for which you are employed did do regarding the visa application?

A. I would assume nothing.

Q. You mean that this record was just prepared for no reason whatsoever?

A. Well, it is possible that he just came and talked to someone and some notes were made. I can't really say, but that would be my assumption.

Q. Miss Wilbur, I will show you the Government's Exhibit 6, the visa application—excuse me, the visa petition, Form I-33 or I-133, of Yee Yuen Foon, also known as Jonathan K. Yee, and ask you is that your signature?

(Testimony of Ruth Wilbur.)

A. As notary public, yes.

Q. As notary public, on both of the affidavits of identifying witnesses, is that correct?

A. That is correct.

Q. Now, I will ask you—— [223]

Mr. Schnake: May this card be marked as an exhibit for identification, card which the witness has previously identified?

The Court: 13 for identification.

(Thereupon, the card was marked Plaintiff's Exhibit No. 13 for identification.)

Q. (By Mr. Schnake): And I will ask you what the meaning of the term I-133 for wife, Chin Bick Wah, is.

Mr. Burns: I am still going to make the same objection, your Honor, please, reading from a document that is not in evidence. I have seen the document and when Mr. Schnake sees fit to offer it, I have certain objections on behalf of the Defendant Levy, but I don't think he should be permitted to read from a document that is not in evidence.

Mr. Schnake: I am asking her as to office practice there as to what——

The Court: You are reading what the meaning of something that appears on this docum[illegible] and I don't know what it is.

Mr. Burns: He didn't so state and I object to his doing that.

Q. (By Mr. Schnake): Miss Wilbur, would you state when a notation is made on any card in

(Testimony of Ruth Wilbur.)

your office listing the number of a form and the designation of the person for whom issued, just what the meaning of that entry would be?

A. Means that that person is interested in that particular [224] function.

Q. In other words, it does not mean necessarily that you have prepared such a form?

A. No, sir.

Q. Now, when a person's name is written on the upper right-hand corner of a file next to the name of the person for whom the services are to be performed, what's the meaning of that term?

A. Means that that person is interested or has referred the client to us.

Q. All right.

Mr. Schnake: At this time we will then offer the card of the firm of Jackson and Hertogs in evidence.

Mr. Burns: If your Honor please, on behalf of the Defendant Levy, we will make the objection that it is hearsay, incompetent, irrelevant and immaterial.

Mr. Schnake: It is an office record, your Honor, and it contains—I think before your Honor could rule on it, you would have to see it.

Mr. Davis: Make the same objection on behalf of the Defendants Fong.

Mr. Schnake: Prior to a ruling on that question, I will ask one more preliminary question.

Q. Miss Wilbur, you know who B. Fong is, do you not? A. Yes, sir. [225]

(Testimony of Ruth Wilbur.)

Q. Who is that? A. Bill Fong.

Q. Would you please point out in the courtroom who Bill Fong is?

A. You mean point at him?

Q. Yes. A. (Witness indicating.)

Q. The gentleman sitting at the table here?

A. Yes.

Q. And he has referred persons to the firm of Jackson and Hertogs, has he not?

A. I assume he recommended the person come to see us, yes.

The Court: A little louder. I don't hear you.

The Witness: I presume that he recommended the gentleman to come to see us, yes.

The Court: Was this card made in the regular course of business of the law practice of Jackson and Hertogs?

The Witness: Yes, sir.

The Court: Made by you?

The Witness: Yes, sir.

The Court. And all of the typing on there is made by you; was it?

The Witness: I don't know whether all of it was.

The Court: Look at it and see if there is any that wasn't.

The Witness: I can't answer that, sir. [226]

Q. (By Mr. Schnake): Is it the regular course of your business to make entries on these cards as notations of functions performed by your office?

(Testimony of Ruth Wilbur.)

A. That is true, but sometimes someone else in the office does set up a card index.

Q. In other words, other employees may do it?

A. That is correct.

Q. As office manager you are acquainted with what the office practice is, are you not?

A. Yes, sir.

The Court: Well, now, what is the purpose of this card?

The Witness: That is a rather good question. I just never——

The Court: I don't ask you what you think about it, madam; I just want you to answer.

The Witness: Well, it's just a record.

The Court: It's a record made by your office in the ordinary course of business, is that right?

The Witness: That is correct.

The Court: Made by you?

The Witness: Yes, sir.

The Court: All right. And is it made at or about the time the events occurred there?

The Witness: The first part of the card, yes, sir.

The Court: What part? [227]

The Witness: The part down to here was made at the time the gentleman came into the office.

The Court: Indicating down to——

The Witness: To here.

The Court: Below the lines "Chin Bick Wah"?

The Witness: Yes.

(Testimony of Ruth Wilbur.)

The Court: That was made at or about the time the date that appears there, 10-17-51?

The Witness: I would imagine so, yes, sir.

The Court: Now, the other information that appears below the name "Chin Bick Wah," where was that information obtained from?

The Witness: I presume it was obtained from notes, pencilled or typewritten notes taken by some lawyer or stenographer in the office.

The Court: Was it your duty to transcribe upon a similar card the information that appears on those notes?

The Witness: In thinning out files, I decided to do that, yes.

The Court: And in the type below "Chin Bick Wah," what does that other typing appear to be?

The Witness: Facts, data.

The Court: Which is taken from notes that appear in your office, is that correct?

The Witness: That's correct. [228]

The Court: And transcribed by you on the card?

The Witness: By me, yes, sir.

The Court: Do you know whether or not the original documents are from which you transcribed that information?

The Witness: They went into the waste basket, I do not know.

Q. And do you know when?

A. No, I do not.

The Court: The information appearing below

(Testimony of Ruth Wilbur.)

the words "Chin Bick Wah" were typed upon this card by you?

The Witness: No, sir.

Mr. Schnake: One last question.

Q. Miss Wilbur, in the regular course of your business for the regular operation of your business, you thin out files after a period of time and transcribe the material from the original notes?

A. I started doing it, I imagine, about two or three years ago.

Q. Have you ever since that time followed a regular course of thinning out certain files and transcribing material from original notes to the typewritten cards? A. Yes, sir.

Q. When you do that, do you accurately transcribe and summarize the material that appeared on the original notes?

A. I attempt to, yes [229]

Mr. Schnake: Then, your Honor, we will offer this card in evidence as a business record.

Mr. Burns: We will renew the same objection, your Honor.

Mr. Davis: Same objection, your Honor.

Mr. Burns: On the ground, so far as Defendant Levy is concerned, it is a hearsay declaration; this witness has no firsthand knowledge of the facts that are recited on this card. She says she transcribed them from some other documents in which she apparently only had hearsay as to the accuracy of their reproduction, and secondly, it is immate-

(Testimony of Ruth Wilbur.)

rial and incompetent, as well as hearsay as to the Defendant Levy.

The Court: I will hear Mr. Davis.

Mr. Davis: I make the same objection, your Honor, on behalf of the defendants whom I represent, on the same ground, that apparently this was a transcription of some notes taken by someone whom Miss Wilbur can't identify. All she did was transcribe something which she doesn't even know at this point whether it was notes, documents, or what it was. It is hearsay twice removed, as far as I can see.

Mr. Schnake: Your Honor, it is the Government's position that records may be maintained whereby information may be transcribed, for example, from original ledgers to another ledger and it may still maintain its nature as business records, and the fact that it may have been reproduced by some process or transcribed from one business record to another does not [230] destroy its nature as a business record. It isn't being offered for a hearsay purpose or showing whether or not the data contained thereon regarding Jonathan Yee was true or not.

However, it is a business record of the facts set forth there of the appearance in the office by the persons and the fact he was interested in a particular case, and the date the individual appeared in the office. I think as to those it is a perfectly proper business record. There has already been testimony by Johnny Yee on these very same points, that he

(Testimony of Ruth Wilbur.)

did go to the office with William Fong at the same time as indicated here.

The Court: Normally the purpose of admitting office records is that they import authenticity because they are made at or about the time of the happening of the event and that they are recorded in the regular course of business. That is the basis for admitting records.

It appears here, however, that the last bottom two-thirds of the card was not made at or about the time of the occurrences therein set forth, but were copied at some later time from some notes which have now disappeared.

I am inclined to think the objection should be sustained.

Mr. Schnake: As to that portion of the card, your Honor? May we read into the record the other portion of the card which was prepared at that time?

The Court: Yes, you can read down to the words "Chin Bick [231] Wah," if you desire.

Mr. Burns: May the record show we are objecting to the reading of that portion insofar as Defendant Levy is concerned.

The Court: The objection may be overruled.

The portion of the card that is admitted in evidence reads as follows: On the right-hand upper corner are the words "No file." Then appears starting at the left-hand side of the card, "Yee Yuen Foon aka Jonathan K. Yee."

(Testimony of Ruth Wilbur.)

I might ask the witness: What does "aka" stand for?

The Witness: "Also known as."

The Court: Then appears below that: "935 Stockton Street," and on the right-hand side "10-17-51."

The next line is "San Francisco, California."

The next line is "I-133 for wife Chin Bick Wah."

Q. (By Mr. Schnake): Would you explain, Miss Wilbur, what an I-133 is?

A. It is a petition to the Immigration Service for the approval of the issuance of an immigration visa.

Q. So that is the same as the form which I have previously showed you on which you acted as the Notary Public, is that correct? A. Yes, sir.

Q. Did William Fong appear before you on the 10th day of December, 1951?

A. I presume so. [232]

Q. Now, you say you presume so. On what do you base that?

A. The fact that I notarized it on December 10th, 1951.

Q. Did he swear to the truth of the statements in the form I-133?

A. He did not have to swear to the statements in form I-133, he only swears to this statement here.

Q. Calling your attention to the portion in the notarized statement that "the statements in the

(Testimony of Ruth Wilbur.)

foregoing petition are true and correct to the best of my knowledge and belief."

Mr. Davis: If your Honor please, I object. He is asking for the opinion and conclusion of the witness and the document speaks for itself.

Mr. Schnake: I am asking whether something was done.

The Court: This witness is an officer of the State, a Notary Public for the State of California, and she is required, under certain occasions, to administer an oath. You may ask her about that.

Q. (By Mr. Schnake): Did you administer an oath to William Fong at that time that the statements in that petition were true and correct?

A. I presume I did.

Q. Did you administer an oath to the other witness, Fong Kim Quon, on that same date?

A. I presume I did.

Q. Thank you. That is all. [233]

The Court: Any questions, gentlemen?

Mr. Davis: Just one question I want to clarify.

Cross-Examination

By Mr. Davis:

Q. Miss Wilbur, when you answered Mr. Schnake's question that this number I-133 was the same as the document which he showed you with that number, did you mean that you prepared the document which he showed you? A. No, sir.

Q. It was just a similar type of document?

(Testimony of Ruth Wilbur.)

A. A similar type of document.

Q. In other words, all you know about that document is that you notarized it?

A. Yes, sir.

Q. You don't know where it was prepared?

A. No, sir.

Mr. Davis: Thank you.

Cross-Examination

By Mr. Burns:

Q. Do you know the Defendant Robert Levy?

A. No, I do not.

Mr. Burns: Thank you.

The Court: Any further questions?

Mr. Schnake: I have no further questions.

The Court: We will take a recess at this time, ladies and gentlemen.

(Short recess.) [234]

MAY JOW

called as a witness on behalf of the Government; sworn.

Direct Examination

By Mr. Schnake:

Q. Please state your name.

A. May Jow.

Mr. Schnake: Speak very loud.

The Court: How do you spell that, please?

The Witness: M-a-y J-o-w.

Q. (By Mr. Schnake): Are you the sister of

(Testimony of May Jow.)

Jean Jow Yee? A. Yes, sir.

Q. Are you acquainted——

The Court: Who is that, please, for the jury?

Q. (By Mr. Schnake): Who is Jean Jow Yee; can you tell us the name of her husband?

A. Yes. Jonathan Yee.

Q. Is that Jonathan Yee who is also known as Yee Hall Kee? A. Yes, Yee Hall Gay.

Q. Also pronounced Yee Hall Gay?

A. Yes.

Q. Are you a citizen of the United States?

A. Yes, sir.

Q. Were you born here? A. Yes, sir.

Q. Have you known Jonathan Yee ever since his mariage to your sister? [235] A. Yes, sir.

Q. About how long ago was that?

A. I think it was in 1947, in about the fall.

Q. Now, during the years since 1947, have you visited the home of Jean and Jonathan Yee?

A. Yes, I have occasionally.

Q. Where have you resided during that period of time? A. My own residence?

Q. Yes.

A. Well, I lived at 967 Alice Lane in Menlo Park.

Q. Calling your particular attention to the summer of 1951, do you recall that period of time?

A. Well, it's hard to go back to all those years, but if you recall some specific incident.

Q. Were you aware of the fact that Jonathan Yee went to Hong Kong? A. Yes, I was.

(Testimony of May Jow.)

Q. And calling your attention to that particular date of October, 1951, when he went to Hong Kong, do you recall the preceding summer months?

A. Well, yes, I would say I do.

Q. How often did you visit in the home of your sister, Jean Jow Yee, that summer?

A. Well, I can't definitely say. Like sometimes it would be once a week, and then sometimes it will be a greater period in [236] between.

Q. During that particular summer, what was the greatest period of time that you did not see your sister, Jean Jow Yee, at her home?

A. Well, I would say maybe—well, she would occasionally come down to our home in Menlo Park, but I'd say, oh, maybe for about two weeks or, oh, around about 18 days, I don't see her.

Q. I see. What was the longest period of time you didn't come up to the house in San Francisco?

A. Well, from what I recall now, I would say maybe three weeks.

Q. Where was she living?

A. At that time?

Q. Yes.

A. At 1544 Powell Street.

Q. Now, when you made those trips to their home at 1544 Powell Street in the summer of 1951, did you see Jonathan Yee there? A. Yes.

Q. How frequently would you see him there?

A. Oh, every time I was there he would be there.

Q. Did you ever stay overnight at the home?

A. Yes, I did.

(Testimony of May Jow.)

Q. Of Jean Yee at 1544 Powell Street in the summer of 1951? A. Yes.

Q. Roughly how frequently did you stay overnight? [237]

A. Well, could I ask you something there? When you say "summer," do you have to say a specific time like from May to July, or anything like that?

Q. I am referring to the months, let's say, the four or five months prior to Jonathan's going to Hong Kong.

A. Yes, I would say I was there, but I can't definitely say like what month I was there or what month I was there last.

Q. When you made these trips to visit your sister, did you stay overnight every time?

A. Yes, most of the time, yes. It was such a great distance to go to my own home, most of the time I would stay with her.

Q. When you stayed overnight was Jonathan Yee there? A. Yes.

Q. Would you see him in the evening?

A. Yes.

Q. How about in the mornings? A. Yes.

Q. During all of that time did you observe anything regarding Jonathan Yee's clothing and possessions? A. Well, it was there.

Q. Were they there at the home?

A. Yes, they were there at the home.

Q. When Jonathan went to Hong Kong in Oc-

(Testimony of May Jow.)

tober, 1951, did you continue to make trips to your sister's home at 1544 Powell [238] Street?

A. Yes, quite frequently.

Q. Quite frequently? A. Yes.

Q. About how often did you stay—go to your sister's home during the period that Jonathan was in Hong Kong?

A. Well, at least once a week and sometimes maybe twice a week.

Q. How long would you stay when you go?

A. I would always stay overnight with her.

Q. You would stay overnight? A. Yes.

Q. During the time that Jonathan was in Hong Kong, did you observe anything regarding his clothing and personal possessions?

A. It was at the home at 1544 Powell.

Q. While Jonathan was in Hong Kong, did you ever see William Fong at the home of your sister, Jean Jow Yee? A. Yes.

Q. About how many times did you observe him there?

A. Well, offhand I can't quite recall how many specific times, but I saw him there quite a few times.

Q. When he visited the home did you ever have a conversation or hear a conversation between William Fong and Jean Yee at the home while Jonathan was in Hong Kong?

A. Regarding what, sir? [239]

Q. Well, was there ever a conversation regarding Jonathan Yee or anything he was doing?

(Testimony of May Jow.)

A. Well, he would ask, you know, whether there were any letters from Jonathan.

Q. Can you tell us about when that conversation that you have just mentioned, when the first of one of those conversations took place?

A. I can't say the exact date again, either, but soon after he arrived back in Hong Kong.

Q. Who was present at that conversation?

A. Well, I would say just the three of us.

Q. That took place at 1544 Powell Street, is that right?

A. Well, 1544 Powell Street, and sometimes, like, we see him on the street.

Q. I am talking about the first of the conversations that you can recall when you discussed this.

A. You know, I can't pin it down specifically and say that it all happened right there, because we do occasionally run into each other on the street.

Q. Do you recall a conversation involving William Fong during the same period of time in which he ever mentioned Chin Bick Wah? A. Yes.

Q. Where did that conversation take place?

A. Well, I would say it was in the home, or if we should [240] occasionally run into the street, or——

Q. Approximately; approximately how long after Jonathan went to Hong Kong did such conversation take place?

A. Well, I would say maybe three weeks or so.

Q. Who was present?

A. It was the same, my sister.

(Testimony of May Jow.)

Q. Can you recall what William Fong said?

Mr. Burns: On behalf of the Defendant Levy, we will object to this conversation as to him, your Honor.

The Court: Overruled.

Mr. Davis: I will object on the ground that the proper foundation hasn't been laid.

The Court: In what way, counsel?

Mr. Davis: She says she is talking about a conglomeration of conversations; sometimes in the house, sometimes she met him on the street. I would like to know if we are talking about a specific conversation.

The Court: I think the record shows she is talking about a particular conversation, about three weeks after he left.

Q. (By Mr. Schnake): Would you tell us what Mr. Fong said?

A. Well, he said that, were there any letters——

The Court: I can't hear that.

The Witness: To my sister he would ask whether there were any letters from Jonathan and any news about how they were coming along. [241]

Q. What if anything did he say about Chin Bick Wah?

A. Well, he would just say, you know, is there any news about her and what is going on.

Q. Was there more than one conversation regarding Chin Bick Wah with William Fong during this period of time? A. I would say yes.

(Testimony of May Jow.)

Q. Can you say about how many such conversations?

A. Well, I can't exactly pin it down to the number, but I'd say several.

Q. Now, calling your particular attention to the summer of 1952, some months—correction.

In connection with that I will ask you: Do you recall the fact that Chin Bick Wah came to the United States? A. Yes.

Q. You recall hearing about that?

A. Yes.

Q. Using that as a date of reference, some months after that occurrence in the summer of 1952, do you recall a conversation with William Fong in Menlo Park? A. Yes, I do.

Q. Did he come to your home there?

A. Yes, sir.

Q. Who was present at that conversation, if you recall?

A. Well, Mr. Fong and myself and this other gentleman by the name of Wong Foon. [242]

Q. Wong Foon? A. Yes.

Q. Now, can you recall what, if anything, Mr. William Fong said to you?

Mr. Burns: Same objection, if your Honor please, on behalf of the Defendant Levy.

The Court: Objection overruled.

A. Well, he came down specifically to look for my sister.

Q. Did he say that?

(Testimony of May Jow.)

A. Well, he wanted to know where Jean was, my sister, Mrs. Yee, where she was.

Q. That is Jean Jow Yee?

A. Yes, that is right.

Q. All right. A. Shall I continue?

Q. Yes, what did she say to him?

A. And so I said, "Why are you looking for her?" He said, "Well, she has disappeared suddenly; that he had been in contact with her all week, and all of a sudden he couldn't locate her any more at 1544 Powell Street."

I said, "Do you think you would find her here?" And he said, "Yes."

And he said that if she wasn't here at Menlo Park, then you knew where she was.

Q. You, meaning whom? [243]

A. Myself.

Q. What, if anything, did you say in reply to that?

A. So I said, well, I have an idea where she was, but of what concern is it of yours? And then he went on to relate what happened, that Jonathan and this Chin Bick Wah had taken off and no one knew where they were, and he knew that Jean was here by herself, and the children and all had taken off with Jonathan, and so he wanted to know where they were so he could find all of them and bring them all back.

Q. What, if anything, did he say about Chin Bick Wah?

A. Well, he was very upset over this entire matter.

Mr. Davis: I will object——

Q. (By Mr. Schnake): What did he say to indicate——

The Court: That may go out.

Q. (By Mr. Schnake): What did he say to indicate that he was upset?

A. Well, he was in a very angry tone and he said that after doing all this for the two of them and bringing her over and spending a fabulous sum of money, that to have them all take off and leave him holding the bag and now to have Jean disappear, too.

Q. Now, did he say anything as to any further association with Chin Bick Wah in this conversation?

A. Well, he said both Jonathan and this Chin Bick Wah, that he would have nothing to do with her, that if they should ever [244] return. I said, well, I don't think that is what you mean. And he said no, that when they return I will have nothing to do with them at all, because I am losing face among my own people, and since I am such a, well, outstanding figure in Chinatown, since he had a name in Chinatown, he didn't want to come back and have this woman on his hands again and to be disgraced.

Q. What, if anything, did Wong Foon say in this conversation at that point?

A. And so I said to this Wong Foon, "Do you really believe that, what Mr. Fong said?"

(Testimony of May Jow.)

And he said, "Well, yes." He said that Mr. Fong is a man of his word and that he would really stand behind it, that if he claims that he wouldn't have anything to do with this Chin Bick Wah and Jonathan Yee, that he never would.

So I said to this Wong Foon, "Are you willing to have a little bet on that?" And he said, "No." He said, "I really thing that is true and you mark my words to that."

Q. Now, during the time that Mr. Fong made these remarks, did you observe whether or not he was smiling, or just what sort of facial expression he was using?

A. Well, no, I don't recall that. You mean, did he say that in a joking manner, is that what you are referring to?

Q. Yes.

A. I would say no; I would say he was very serious about that. [245]

Mr. Schnake: That's all.

Cross-Examination

By Mr. Davis:

Q. Mrs. Jow, directing your particular attention to this conversation which allegedly took place in your home in which you and Mr. Fong and Mr. Foon Wong were present, isn't it a fact that you made the remark to Mr. Fong that Jean would be a damn fool if she takes Johnny back?

A. Yes.

(Testimony of May Jow.)

Q. "I wouldn't marry that fellow on a silver platter"?

A. I didn't say on a silver platter, but I did say she would be foolish to take him back, as well as for him to take her back.

Mr. Davis: Thank you. That's all.

Cross-Examination

By Mr. Burns:

Q. Mrs. Jow, when you made that remark about what your sistser would be if she took Jonathan back, that was not based entirely alone on the fact that your brother-in-law had run off with his children and Chin Bick Wah to Seattle, was it?

A. No, I would say no.

Q. You had been close with your sister over a long period of time, had you not?

A. That's right.

Q. And you knew of the fact of her marriage to Jonathan in 1947 and during the course of that marriage, did you not? A. Yes, sir.

Q. Would you describe to the ladies and gentlemen of the jury, [246] Mrs. Jow, the conduct of Jonathan Yee toward your sister during that period of time?

A. Well, I, of course, like I was telling——

Mr. Schnake: Could I have that question read your Honor? I think it is objectionable, and I didn't hear the last part of it.

(Record read by the reporter.)

(Testimony of May Jow.)

Mr. Schnake: I will object to that as calling for the opinion and conclusion of the witness, and vague and indefinite, both as to time and/or circumstances.

The Court: I think the question is objectionable. You are entitled to show the apparent attitude, if you so desire, of the two parties toward each other.

Mr. Burns: I will be more specific.

The Court: The specific details I don't believe you should go into.

Q. (By Mr. Burns): Well, it is a fact, is it not, Mrs. Jow, that your sister told you from time to time of the conduct of her husband toward her?

A. Yes.

Q. That he ran around with another woman in Chinatown, isn't that correct?

A. Well, not specifically that, about running around with other women in Chinatown, but some other details, yes.

Q. Told you about Lueille Lum? [247]

A. Well, I don't know people by their names, these particular women, so if you refer to her, I am very vague; I don't know anything about her in particular.

Q. Did you ever witness your brother-in-law use violent language toward your sister in your presence?

A. Well, like you say, violent language, how do you mean? You mean——

(Testimony of May Jow.)

Q. He cursed her.

A. Swear and everything like that?

Q. That's right.

A. No, I would say not swearing, but he would, normally, like anybody else, you know, get peeved at her, something like that, and he might shout at her, but not necessarily use cuss words, or anything like that.

Q. Did you ever see him exercise any physical violence on your sister?

A. No, not in front of me; no.

Q. Did your sister relate to you the fact that he had? A. Yes, there was one incident.

Q. It was shortly after that Jonathan Yee took off for Reno, Nevada, and secured a divorce from your sister?

A. I couldn't say that specifically, because I do not even know the date of that divorce.

Q. If I were to tell you the date of the divorce was May 11, 1951, in Reno, Nevada, would that refresh your recollection? [248]

A. No, I couldn't say whether this particular incident that I'm referring to happened before or after the divorce; I don't know, for sure.

Q. But would that knowledge of the lack of domestic tranquility in your sister's home, plus the fact that some time in '52 he had taken off with another woman to Seattle, prompted you to remark that if your sister took him back she would be a damned fool? A. No, I wouldn't say that.

Q. But you did make that remark?

(Testimony of May Jow.)

A. Yes, I did.

Mr. Burns: That's all.

Mr. Schnake: One question, Miss Jow.

Redirect Examination

By Mr. Schnake:

Q. In response to Mr. Davis' question, you said something about someone being a damned fool to take Jonathan back, as well as for him to take her back? A. I mean Mr. Fong.

Q. Who do you mean: Mr. Fong?

A. I mean Mr. Fong.

Q. By "her" in that sentence, who do you mean?

A. I mean this woman here, Chin Bick Wah.

Q. The defendant sitting at the table?

A. Yes.

Mr. Schnake: Thank you. That's all. [249]

The Court: All right. The witness may be excused.

LEMUEL JEN

a witness called on behalf of the Government; sworn.

The Clerk: What is your name, please?

A. Lemuel Jen.

Direct Examination

By Mr. Schnake:

Q. Mr. Jen, what is your occupation?

A. Travel agent.

(Testimony of Lemuel Jen.)

The Court: I don't hear it.

The Witness: Travel agent.

Q. (By Mr. Schnake): Mr. Jen, are you employed by the Lerio's Travel Agency?

A. I was, sir.

Q. Were you employed by them in October of 1951? A. Yes, sir.

Q. Now, is it the regular course of your business to maintain a record of all overseas tickets sold through your travel agency, or was it at that time?

A. Well, I have just an ordinary card record at the time, but since, I mean, about two years ago, due to some refunds, have to make a complete list of all the bookings for Hong Kong, and that is a complete list.

Q. Did you yourself make up this list of all the bookings? A. Yes, sir.

Q. Now, I will show you your book. Is this the book you—— [250] A. Yes, sir.

Q. ——loaned to Mr. Moore of the Immigration and Naturalization Service?

A. I think he got that from the head office.

Q. I see. This book was made up in your own handwriting? A. Yes, sir.

Q. Now, did you make the entries in here regarding the name Yee Yuen Foon? A. Yes.

Q. Can you tell from your records how much was the ticket, the cost of the ticket for Yee Yuen Foon?

A. That's what it says here: $1,306.80.

(Testimony of Lemuel Jen.)

Q. $1,306.80? A. Yes, sir.

Q. Does this record indicate the date that the ticket was purchased?

A. That was the date the ticket was paid.

Q. Paid for? A. Yes, sir.

Q. What date was that?

A. October 7th, 1951.

The Court: Is that American dollars or Hong Kong dollars?

A. Well——

Q. (By Mr. Schnake): Would that be American money?

A. That would be American dollars. [251]

Q. As a matter of fact, you know from your experience as a travel agent that it was?

A. That was the fare at the time.

Q. That was the fare at that time?

A. Yes.

Q. This entry on the right-hand side, does that indicate the date of departure of the person purchasing the ticket? A. Yes, sir.

Q. What was the date of departure for Yee Yuen Foon on this record?

A. October 26, 1951.

The Court: What was the date?

Mr. Schnake: October 26, 1951.

Q. Did you actually deliver the ticket in this case for Mr. Yee Yuen Foon?

A. I can't recall. Usually they come to the office and pick it up.

Q. I see. You have no recollection as to this

(Testimony of Lemuel Jen.)

particular one. Now, Mr. Jen, would you tell me if this entry of Chin Bick Wah on the back side of that page, is that in your handwriting?

A. No, sir.

Q. Do you know how that entry of Chin Bick Wah got on this page?

A. Well, I don't know. This was passed on from the head [252] office.

Q. It was in the office? A. Head office.

Q. This entry was on the book at the time it was turned over to the Immigration officer, wasn't it?

A. I wouldn't know. I didn't see the book, no.

Mr. Schnake: This Lerio's Travel Service Overseas and Hong Kong Booking book, I think Item 80 thereon, will be offered in evidence as Government's Exhibit next in order.

The Court: It may be admitted.

Mr. Davis: That is limited to Item 80, not offering anything else?

Mr. Schnake: We are offering that page of the book your Honor, including the entry on the back.

Mr. Davis: No foundation has been laid for the entry on the back.

The Court: You offered Item 80, as I understood.

Mr. Schnake: Your Honor, if I said limited to Item 80, I did not mean to. I meant the book was offered in evidence.

The Court: You want the whole book?

Mr. Schnake: May I offer the page containing Item 80?

(Testimony of Lemuel Jen.)

Mr. Davis: The only thing any foundation has been laid for is Item 80, this witness did it in his own handwriting; the other item, if it was done, after it left his hands. He can't lay a foundation for the entry, offering that. [253]

Mr. Schnake: We will ask that page, the entire page, both sides of it, be admitted in evidence.

The Court: Both sides will not be admitted in evidence. The face of the page may be admitted, including Item 80.

Give it Exhibit No. 14.

(Thereupon the page identified above was admitted in evidence and marked Plaintiff's Exhibit No. 14.)

Mr. Schnake: No further questions.

Mr. Davis: I have no questions.

Mr. Burns: No questions.

Mr. Schnake: That is all.

The Court: That is all. You may be excused.

(Witness excused.)

Mr. Schnake: Mr. William Moore.

WILLIAM MOORE

called as a witness on behalf of the Government; sworn.

The Clerk: State your name, please.

The Witness: William R. Moore.

Direct Examination

By Mr. Schnake:

Q. Mr. Moore, will you state your occupation?

A. I am an investigator for the United States Immigration and Naturalization Service.

Q. Would you please state whether or not you have participated in the investigation of this case?

A. I have. [254]

Q. Are you the individual, one of the two individuals who contacted Mr. Robert Leonard Levy on this matter? A. I am.

Q. Did you question him on April 3 of 1956?

A. I did.

Q. Would you relate to the Court your recollection of the conversation that you had with Mr. Levy on that date?

A. About 10:00 o'clock in the morning Mr. Prather and myself called at Mr. Levy's office, an appointment was made with him.

Q. Who made that appointment?

A. I made the appointment by telephone with him. We called at his office at about 10:00 o'clock in the morning to discuss the matter of the William Fong case and the divorce action between Jonathan Yee and his wife Jean Yee.

(Testimony of William Moore.)

Mr. Prather asked Mr. Levy if he had a case file on record in the Jonathan Yee divorce case, and Mr. Levy stated that he had not, that he had referred the matter to an attorney in Reno.

And then I believe Mr. Prather asked Mr. Levy how Jonathan Yee had contacted him. Mr. Levy replied that he had, that Mr. Yee had been referred to Levy by a cousin or uncle or something, some kind of relative, and at that time Mr. Levy declined to name the relative.

We talked about this a little bit and then asked Mr. Levy if he knew William Fong, the other defendant. He said that [255] he had, he had known him since, I believe, he said 1928, might have been 1927, and that he had represented him in legal matters and was a personal friend.

Then I believe it was Mr. Prather asked him, Levy, if he knew a Chin Bick Wah, and Mr. Levy replied that he did.

And a little while later Mr. Levy did tell us that it had been William Fong that had referred Jonathan Yee to him for the divorce.

During the conversation Mr. Levy was asked about Jean Yee, and he stated that he had only seen her once, and had talked to her on the telephone one time.

Q. Did he indicate those were two separate conversations, once he had seen her?

A. Yes, he indicated those were two separate conversations.

Q. All right.

(Testimony of William Moore.)

A. Mr. Prather and myself were talking to Mr. Levy and we asked him about it, about the case of Chin Bick Wah, and Mr. Levy stated he knew nothing about it. And we briefly related some of the more or less suspicious circumstances and told Mr. Levy that we had been asked to, or more or less instructed to contact him, that some persons had said that he might be a suspect in this matter of this woman coming to this country.

Mr. Levy became quite upset. I shouldn't have used that term, really. He was concerned and asked us if it wouldn't be possible for him to talk to whoever was directing us, and I [256] called the United States Attorney's office on the telephone at that time and arranged an appointment for Mr. Levy to speak to the United States Attorney or some of the Assistants United States Attorney at that time.

Mr. Levy and Mr. Prather and myself left his office on Market Street and went in the Immigration Service car to the United States Attorney's office. We introduced Mr. Levy to the United States Attorney and then left.

Q. Now, the following morning did you and Mr. Prather go to office of Mr. Levy again?

A. Yes, we did.

Q. At that time did you have a conversation with him regarding examining his records?

A. Could I go back a litle bit, Mr. Schnake?

Q. Did you miss some point?

A. No, in regard to this. One of the Assistant

(Testimony of William Moore.)

United States Attorneys called me by telephone on the afternoon of April 3. That was the first day we had talked to Mr. Levy, after they had talked to him, and stated that Mr. Levy had said that his records were open for examination and that an appointment had been made for Mr. Prather and myself to examine his records at, I believe it was 10:00 o'clock the next morning.

Q. At 10:00 o'clock the next morning did you go to his office?

A. I did, accompanied by Mr. Prather. [257]

Q. Would you relate the conversation and events that took place?

A. Well, we asked Mr. Levy about these records, and he produced a small book which he stated contained all the records of the fees that he had obtained. He sat at the desk and I sat across the desk from him and Mr. Prather was at the end a little ways from the desk.

Mr. Levy opened the book and looked at it, and all I ever saw of the book was the back. Neither Mr. Prather nor myself saw any of the records. Everything that we heard or everything that we know about those records were read to us by Mr. Levy, and he stated that he had received $100.00 at one time from William Fong in regard to the settlement of an estate for another Fong family person.

And then Mr. Levy volunteered he had borrowed $250.00 from Mr. Fong. I believe that was in June of 1953, he stated, and had given him a post-dated

(Testimony of William Moore.)

check for that amount, which was not cashed until two or three months afterwards.

Q. Was that the extent of that conference with Mr. Levy at that time, as best you can recall?

A. The best I can recall at this time.

Q. Now, Mr. Moore, did you on April 3 talk to Mr. William Fong in an automobile outside his store at 935 Stockton Street? A. Yes, I did.

Q. Who was present at that conversation? [258]

A. Mr. Prather, Mr. Fong and myself.

Q. Would you relate to the Court the conversation that you had with William Fong?

Mr. Burns: On behalf of the Defendant Levy I will object to a conversation out of his presence in April of 1956 as being long after the period alleged in the indictment and no part of the charge laid in the indictment or related to any of the purported acts charged against the Defendant Levy in the indictment.

Mr. Schnake: Again, your Honor, I would state the overt acts and the conspiracy set forth in the conversations in that same period of time; further, one of the objects as stated in the indictment, and as stated in the testimony of the witness was——

The Court: Where is this object you are talking about, Mr. Schnake?

Mr. Schnake: The last point stated in the indictment, your Honor, the objects of the conspiracy.

Mr. Burns: I believe it is Item J that appears on page 6 of the indictment, your Honor please.

The Court: I am inclined to think this testi-

(Testimony of William Moore.)

mony is not admissible as against the Defendant Levy. That will be the order.

Mr. Schnake: Your Honor, on that point could I suggest that it would be admissible as a declaration by this conspirator [259] showing the objects and purposes of the conspiracy and is not necessarily an act in furtherance of the conspiracy?

The Court: It may be admitted, as I stated before, as proof, if it is proof, of the existence of a conspiracy, but not as any declaration of any kind by the Defendant Levy.

Mr. Schnake: All right.

Q. Would you relate the conversation as you recall it, Mr. Moore?

A. This conversation took place in a car that—I don't know who owned the car. Mr. Fong took Mr. Prather and myself to the car. It was parked on Stockton Street not quite in front of his milk store.

Mr. Prather sat in the front seat, if I remember correctly, with Mr. Fong, and I sat in the back seat. Mr. Prather, you might say, asked the opening question of Mr. Fong, and it was in effect: "I presume you know why we are wanting to talk to you," and Mr. Fong replied, "Well, if you had come to me first, I could have told you all about it."

Then we asked Mr. Fong about Jonathan Yee, and he stated that he had known Jonathan Yee and that Jonathan Yee had worked for him continuously up until the time he left for Hong Kong in the fall of 1951.

(Testimony of William Moore.)

And we asked him about Chin Bick Wah, and he said "Yes, that is my wife now; after Jonathan brought her over here, I fell in love with her and married her." [260]

Q. Did he say when he had started courting her?

A. Well, we asked him that specifically, and he stated that he started courting her after Jonathan Yee and Chin Bick Wah had been divorced.

We asked Mr. Fong if he had recommended Jonathan Yee to Mr. Levy or had directed him to Mr. Levy for the divorce action between Jonathan Yee and Gee Jow Yee, and Mr. Fong replied that he had.

When we asked about Chin Bick Wah, Mr. Fong told us that he had been writing letters to Chin Bick Wah for some time, that a friend of his had been in China and upon his return had shown him a picture of Chin Bick Wah and stated that this was a nice girl, or words to that effect, and that she wanted to come to the United States.

Mr. Fong stated that he had written letters to Chin Bick Wah and had exchanged letters with her.

Also, that Chin Bick Wah had sent a picture to him, a later picture in a letter.

Then we asked about this trip that Jonathan Yee took to Hong Kong and Mr. Fong stated that he had bought the airplane ticket for Jonathan Yee to make the trip, that is, we asked him out-

(Testimony of William Moore.)

right who paid for the airplane ticket, and Mr. Fong said, "I did."

Then we asked him about expense money for the trip and he said, "Well, I gave Jonathan Yee $200.00 that was in the nature of an advance against his salary; he had been working for me and he was a true and faithful employee and he told me he wanted a couple of months off to make a trip to Hong Kong."

We asked Mr. Fong at that time if he knew that Jonathan Yee intended to go to Hong Kong to marry Chin Bick Wah, and he said no, he didn't, he just thought he wanted to make a trip and that —well, several times we referred to this money for the ticket and the advance of $200.00, which would have been about $1500.00, and asked Mr. Fong if he had any proof that he had loaned the money to the man, a note or an I.O.U., anything like that. He said no, he was an old employee and it's just Chinese custom not to get a receipt or a note or promissory note in the case of that kind, "I just loaned him the money."

And he further stated that Mr. Yee hadn't paid back the money.

Then we talked to Mr. Fong and asked him why Jonathan would have gone over there and married Chin Bick Wah, how did he get acquainted with Chin Bick Wah, or even know about her, and Mr. Fong said that he had shown the picture of Chin Bick Wah to Jonathan when he had some of these letters, and had shown him the picture, and Mr.

(Testimony of William Moore.)

Fong said he must have fallen in love with the picture, "That's what he did; he fell in love with the picture," and he went over to Hong Kong and married the girl and brought her back here. [262]

At that time we asked Mr. Fong if Jonathan Yee and Chin Bick Wah came back together, and he said, no, Jonathan came first and Chin Bick Wah later.

Q. Speaking of Chin Bick Wah, was any question asked regarding Chin Bick Wah's prior marital history?

A. Oh, yes, I asked Mr. Fong what had happened to Chin Bick Wah's first wife?

Q. You mean husband?

A. First husband, excuse me; and Mr. Fong said, "Well, Chin Bick Wah told me that he drowned," and very shortly after that Mr. Fong said there had been a rumor around town that Chin Bick Wah was married four times before she married Jonathan Yee, and either Mr. Prather or myself showed interest, "But I didn't ask her about any of those other marriages; I haven't inquired about that at all."

Q. Now, did he say anything about the subject of any money being sent to Chin Bick Wah?

A. Yes.

Q. What was asked and what was said?

A. I don't recall whether it was myself or Mr. Prather that asked him about the month, but he was asked specifically if he had sent money to Chin Bick Wah, and Mr. Fong stated that he had, that

(Testimony of William Moore.)

he had sent, he believed, about $100.00 a month to Chin Bick Wah in Hong Kong for a period of over two years. [263]

Q. Was that American or Hong Kong dollars?

A. He didn't specify. We presumed that it was American dollars.

Mr. Davis: I will ask what he presumed go out.

The Court: It may go out.

Q. (By Mr. Schnake): Did he say why he had sent this money to Chin Bick Wah?

A. Mr. Fong stated that he sent the money to Chin Bick Wah to take care of, for his sister-in-law, who was living in Hong Kong, and for the support of some nephews and nieces. I don't recall the exact number now.

Q. Whose nephews and nieces?

A. It would be Mr. Fong's nephews and nieces, be the children of his sister-in-law in Hong Kong He stated that he sent the money to Chin Bick Wah because the sister-in-law was a village woman and didn't understand how to take care of money in Hong Kong.

Q. Now, in this conversation with Mr. Fong, was there anything mentioned about Chin Bick Wah's attempts to enter as a nurse?

A. Yes. Mr. Prather, I believe, asked Mr. Fong if he had sponsored Chin Bick Wah in a previous attempt to come to the United States, and Mr. Fong replied that he had attempted to sponsor Chin Bick Wah to come to the United States as a student nurse, but she had been denied a visa because she

(Testimony of William Moore.)

could not [264] understand sufficient English so that she could qualify as a student.

Q. Did Mr. Fong say anything regarding his first wife, Gee King Yip, in connection with this correspondence you have just mentioned?

A. Yes, he mentioned that Gee King Yip had seen the picture of Chin Bick Wah, and that she was very jealous, apparently.

Q. Now, did you have any conversation at this time regarding Mr. Fong's own divorce?

A. Yes, we asked him about his divorce from his first wife, Gee King Yip, and he stated that he and Robert Levy had gone together to Reno and that Robert Levy had introduced him to an attorney Rutherford in Reno at that time and that this attorney Rutherford had taken care of the divorce matter for him in Reno.

Q. Did you ask, or was there any conversation regarding the relationship of any of these parties to one another?

A. Oh, yes, we asked Mr. Fong if Jonathan Yee was actually related to him, and if Jonathan Yee was a blood relative of his mother, Yee Shee.

Q. And what did he say?

A. Mr. Fong said no, that that was not true, that Jonathan Yee was not related to either Yee Shee or himself, and he went into a long explanation as to Chinese families, and how persons of the same clan name would call elder persons of the same clan name by the honorary title of aunt or uncle.

(Testimony of William Moore.)

Q. Now, at that time did you ask Mr. Fong to come to the office and repeat these remarks?

A. Yes.

Q. What did he say on that?

A. Mr. Fong was asked if he would come to our office and repeat the same remarks in the form of a written statement, and he told us that he wanted to consult his attorney, Mr. Jackson, first, and would advise us later.

Later that afternoon I received a telephone call and Mr. Fong—telephone call from Mr. Fong and he told me that he had consulted with his attorney, Mr. Jackson, and Mr. Jackson had told him to tell the truth, but not to make any statements.

Q. Now, on April 6th, 1955—excuse me—1956, did you have another conversation with Mr. William Fong? A. Yes, I did.

Q. Where did that conversation take place?

A. It was in a United States Immigration Service automobile on Stockton Street, a little ways toward the tunnel from Mr. Fong's milk store.

Q. Who was present in the automobile?

A. Mr. Prather, Mr. Fong and myself.

Q. Would you relate what conversation you had in the automobile at that time?

A. Well, it was—— [266]

Mr. Burns: I make the same objection that I made to the previous conversation.

The Court: Objection overruled.

Mr. Burns: Pardon me, your Honor, I think

(Testimony of William Moore.)

you sustained the previous conversation. This is the conversation, is it not, in April of this year?

Mr. Schnake: Your Honor, it is our contention that that is binding on all three of these defendants.

The Court: Well, it is not admitted as to any declaration of the Defendant Levy. As I stated, it is admitted as proof, if it is proof, of the existence of a conspiracy.

Mr. Schnake: Thank you.

Q. Go ahead, Mr. Moore.

A. This conversation was quite lengthy and more or less informal that took place in the car that evening. We went over much the same things with Mr. Fong that we had before.

We asked him if it was true that Mr. Levy had advised him to have Jonathan Yee bring Chin Bick Wah over here, and he said no, "You're all wrong; Mr. Levy doesn't have anything to do with this," words to that effect. And he told us Mr. Levy had been to the United States Attorney's office for some period of time the day before, and we told Mr. Fong, "We told you that yesterday, that the United States Attorney was talking to Mr. Levy when we talked to you."

Then we asked Mr. Fong again if he had known that Jonathan [267] Yee was going over to Hong Kong to marry Chin Bick Wah and bring her back here and he made some kind of half jocular, more or less vulgar remark to the effect that if he had

(Testimony of William Moore.)

known that that was his intention, he wouldn't have allowed such a thing to happen.

Q. Was there any conversation regarding whether or not Jonathan had been working for him? A. Oh, yes.

Q. Continuously?

A. Yes, we specifically asked Mr. Fong if Jonathan Yee had been working for him right up to the time he left for Hong Kong, and Mr. Fong stated that he had.

Now, Mr. Fong was questioned quite a bit about the milk store, and so forth, and he told us at that time that when Roger Lee and Jonathan Yee were in the store together, that it was a partnership in name only. Mr. Fong stated that he had set up the partnership to try to beat the union because they were trying to stop him from delivering milk. I don't understand what the whole thing was about, giving him some trouble about deliveries of milk, but he said it was a partnership in name only, and "I just paid regular wages to Roger Lee and Jonathan Yee, and after the war I had the papers changed to show it as an individual ownership."

Q. Was there any conversation, this second interview, regarding the reason for a loan of money to Jonathan Yee? [268]

A. Well, yes, about the same as there had been before.

Q. Would you state, if you recall, what was asked and the answers that were given?

A. Mr. Fong was asked again if he had fur-

(Testimony of William Moore.)

nished the money for Jonathan Yee to go to Hong Kong and he reiterated that he had, and he insisted again that it was in the nature of a loan or an advance against his wages. He stated that he had given Jonathan Yee two months vacation and advanced him $1500.00 to make a trip to Hong Kong and come back, which he believed for the purpose of Jonathan Yee's seeing his mother, or for a pleasure trip or something like that.

Mr. Schnake: Your Honor, could we take a recess at this time? I am not feeling too well.

The Court: All right.

Mr. Davis: If the Court please, you intend to reconvene at 9:30 tomorrow morning? I have to be before Judge Murphy, but I am sure it will only be not more than five minutes.

The Court: Let's make it 9:45 then, tomorrow morning. 9:45 tomorrow morning. Remember the admonition heretofore given you about not discussing this case, nor forming or expressing an opinion upon it until it is finally submitted to you.

9:45 tomorrow morning. May I see counsel in chambers?

(Thereupon the case was adjourned until 9:45 a.m. on Wednesday, July 11, 1956.) [269]

Wednesday, July 11th, 1956—9:45 A.M.

The Court: The jury is present. Proceed. Mr. Moore was on the stand?

Mr. Schnake: Yes. Mr. Moore?

WILLIAM MOORE

recalled as a witness. Previously sworn.

Direct Examination
(Continued)

By Mr. Schnake:

Q. Mr. Moore, I believe that yesterday afternoon you were describing a conversation between yourself, Mr. Prather and Mr. Fong Wy Sum in an automobile outside Mr. Fong's store at 935 Stockton Street, is that correct?

A. That's correct.

Q. This is the second conversation with Mr. Fong, is that correct? A. Yes, that's correct.

Q. I believe that you had last mentioned a picture of Chin Bick Wah, unless I am wrong on that. Could you tell us what other conversation there was regarding that subject?

A. Mr. Prather and I talked to Mr. Fong about a picture of Chin Bick Wah that had been previously mentioned, and Mr. Prather asked Mr. Fong, "When did your wife, Gee King Yip, see this picture? How did she happen to see the picture?" And Mr. Fong didn't answer the question. [271]

The Court: Keep your voice up, please.

The Witness: Yes, sir. Mr. Fong didn't answer the question too precisely and Mr. Prather said——

Mr. Davis: I will ask that go out.

The Court: It may go out.

Q. (By Mr. Schnake): Would you state what he said, if you recall, when you asked that question —when that question was asked.

(Testimony of William Moore.)

A. That was the question, when did Gee King Yip see the picture?

Q. Yes.

A. I can't recall exactly what Mr. Fong said, but he did not give a date or specific time as to when the picture was first seen by Gee King Yip.

Mr. Davis: I ask that also go out.

The Court: That may remain.

A. (Continuing): Mr. Prather then asked Mr. Fong if Gee King Yip had seen the picture of Chin Bick Wah when she was in the hospital. I believe he added there, "With a broken leg," and Mr. Fong said, yes he had shown her the picture.

Mr. Prather then asked if he had told Gee King Yip he wanted to bring this girl to the United States as a second wife, or concubine, and Mr. Eong said no, he didn't exactly say that and immediately changed the subject and talked about something else. [272]

Mr. Davis: I will ask that latter part go out.

The Court: That may go out. Mr. Witness, you are not to give your conclusions, but what was said by the parties.

The Witness: Yes, sir.

Q. (By Mr. Schnake): You recall, Mr. Moore, what was said by Mr. Fong at that time after the remarks you have just described?

A. He stated—I can't definitely recall just exactly what he did say.

Q. After that subject what was next said?

A. A little later in the conversation we asked

(Testimony of William Moore.)

Mr. Fong what Gee King Yip had said when he showed her this picture and he said, "Well, she didn't say much of anything."

And then he added, "She said, in effect, Well, Bill, if you have to have a number two wife you shouldn't get one so old, you should be able to find a younger girl."

Q. Can you relate what was said after that?

A. Not about that particular item.

Q. All right. Was there any conversation about Jonathan Yee and his employment in this conversation?

A. Yes, two or three times during this conversation we asked Mr. Fong specifically about Jonathan Yee's employment. Mr. Fong stated that Jonathan Yee had been a trusted employee and that he had been employed continuously by him, by Mr. Fong, at the milk store up until the time that he went to—.[273] went on that trip to Hong Kong.

Q. Was there any conversation regarding Mr. Levy at this time?

A. Yes. Mr. Fong remarked to us, or asked us why are you trying to pin this on Mr. Levy. He didn't have anything to do with this. And we told him we were just attempting to obtain the truth about the whole picture concerning the whole matter, and again we went into how long Mr. Fong had known Mr. Levy. He stated that it was approximately twenty-eight years that Mr. Levy was his friend and had been his legal advisor for a long period of time.

(Testimony of William Moore.)

Q. Was there any conversation as to how frequently he had seen Mr. Levy?

A. Yes, we asked Mr. Fong how frequently he saw Mr. Levy and he said that it could be every day or so, maybe once a week, maybe sometimes he wouldn't see Mr. Levy but once in two weeks.

Q. Now, in this conversation was there any reference to, was there any discussion regarding any other Immigration matters that Mr. Fong had any contact with?

A. Mr. Prather asked Mr. Fong if he had actively sponsored or been interested in aliens coming to the United States under refugee relief program. Mr. Fong said yes, "I recommended a friend of my wife's to the Senator from——"

Mr. Davis: If the Court please, I object to this as being incompetent, irrelevant and immaterial, outside of the [274] issues of this case.

Mr. Schnake: It goes to the defendant Fong's knowledge of these matters and his participation in Immigration matters, so it would go to his intent and knowledge at the time of the execution of these various documents, your Honor.

The Court: I don't think it has anything to do so far with the allegations of the indictment in this case, counsel.

Mr. Schnake: I think it is preliminary, your Honor, to showing the degree of familiarity he had at all times with these rules and regulations as to whether or not these offenses were done knowingly.

Mr. Davis: This is on an entirely different matter, nothing to do with this case; the Refugee Relief Act, nothing in this case about that.

The Court: At the moment I don't see that they are admissible, the statements are admissible.

Q. (By Mr. Schnake): Was there any conversation at this time, Mr. Moore, as to Mr. Fong's marital conduct over the years with his wife?

A. Yes. Mr. Fong explained to us at quite some length his marital life with his wife, Gee King Yip. He stated that she had not been a good wife, that she didn't understand him and disagreed with him quite frequently, didn't want him to go out or to go out with him and that much of the time they had not lived together as man and wife and he was talking about [275] that, he brought up the name of Nancy and said, "You know about Nancy, she lived in the apartment in the apartment house with my mother," he didn't state any particular dates or times, but he did state if Nancy had been a Chinese girl instead of a Caucasian he would have married her a long time ago.

Mr. Davis: I object to that—withdraw that.

Q. (By Mr. Schnake): In this conversation was there any reference to the relationship of Jonathan Yee to anyone else? A. Yes.

Q. What was said?

A. We told Mr. Fong that we had information that Jonathan Yee was related to him and asked him if that were true. He stated it was not true. A little later Mr. Fong was asked if he brought Jonathan Yee to this country and he said no, he

(Testimony of William Moore.)

did not, and he was asked who brought him to this country and in effect Mr. Fong said, "I believe his father did."

Mr. Davis: I object, your Honor, to anything after the language "in effect."

The Court: I don't hear you, Mr. Davis.

Mr. Davis: I say, I object to any answer after the language he stated "in effect" as being the opinion and conclusion or summary of the conversation as expressed by this witness.

The Court: I take it he is entitled to state [276] the substance of the conversation, as he knows it. Is that what you meant by the words "in effect," you were giving the substance?

The Witness: Yes, sir, not that I am quoting the words direct as he said them.

Q. (By Mr. Schnake): Can you give the conversation as best you can recall it then?

A. Yes. After Mr. Fong stated that he believed his father brought him here, he was asked who was the father and Mr. Fong stated that he didn't recall the name, but the man ran a cleaning establishment on Bush Street.

It was then remarked by either myself or Mr. Prather that it looked peculiar that a young boy would come to the United States, his first time here, and never live with his father, he would immediately go to live with someone else like, for instance, Mr. Fong, and Mr. Fong said he didn't know anything about that, but he had first discovered Jonathan Yee working as a fry cook in a restaurant

(Testimony of William Moore.)

and thought he was a very intelligent boy and had taken him to his milk store to work for him.

Mr. Fong went on to state that he had helped quite a few Chinese, say, young Chinese by taking them to his milk store or—I shouldn't say take him to the milk store, but that he had helped quite a few Chinese in a similar manner.

Q. Let me interrupt at this point and ask you regarding [277] this statement that the true father of Jonathan Yee was a man who had a cleaners on Bush Street. Have you made a diligent search for Yee Hing Bow, the alleged father of Jonathan Yee, or paper father, as he is described, of Jonathan Yee?

A. I have, as one of my duties. The man is a fugitive from justice, and I have been instructed to attempt to locate him.

Q. Incidentally, in your search for him you found what his place of business is? A. Yes.

Q. What is it?

A. The Bush Street Cleaners, I don't recall the exact address.

Q. In this conversation was there any reference to a conversation with Gee King Yip regarding sharing of duties in the event this girl came over?

A. Yes.

Q. Can you describe the conversation as best you can recall it on that subject?

A. When Mr. Fong was first asked about what he had told Gee King Yip when she was in the hospital about bringing a concubine to the United

(Testimony of William Moore.)

States, he stated that he was quite a tricker and that he had told Gee King Yip he believed at that time that he shouldn't just have one concubine, he should have three or four and that Gee King Yip could sit at the store at the cash register and just put the money in the cash [278] register and wife number two could do the cooking and another wife could do the selling, and he had it divided up where four wives could take care of everything, and the idea was that Gee King Yip was just to take care of the money and ring up the cash register at night.

Q. In this conversation, Mr. Moore, was there any discussion regarding any financial transactions between Fong and Mr. Levy, or any loans?

A. Oh, yes. Fong toward the latter part of the conversation, Mr. Fong was talking about Mr. Levy and he said, "You know, I sort of feel sorry for Mr. Levy, he has trouble, he has a wife that tries to keep up with the Joneses and he is always broke."

He said, "Why, Mr. Levy is always borrowing money from me, ten, twenty-five, fifty dollars. At one time he borrowed $250.00 from me and usually he gives me his personal check and I don't cash the check until I check with him and find he has money in the bank to cover the check."

Q. Were there any references as to how long a period of time that had continued?

A. I don't recall the exact period of time that Mr. Fong stated that it was—indicated it was over a considerable period of time.

(Testimony of William Moore.)

Q. Was there any reference in this discussion to Mr. Fong's divorce from Gee King Yip? [279]

A. Yes. Discussing that divorce from Gee King Yip, Mr. Fong stated that he and Mr. Levy had gone to Reno in connection with the divorce and that Mr. Levy had introduced him to attorney Rutherford in Reno and that Mr. Rutherford had handled the divorce.

Mr. Schnake: At this time we will offer in evidence the findings of fact and conclusions of law and decree and transcript of testimony in the divorce action of William W. Fong, also known as Fong Wy Sum, versus Gee King Yip, in the Second Judicial District Court, State of Nevada, which decree was filed on October 24, 1952, and an authenticated copy of which has been previously exhibited to counsel.

Mr. Burns: On behalf of the defendant Levy we will interpose the objection heretofore made.

The Court: Overruled. It may be marked Exhibit 15.

(Thereupon the foregoing documents concerning the divorce action of Fong aka Fong Wy Sum vs. Gee King Yip, filed Oct. 24, '52, was marked and introduced into evidence as Government's Exhibit No. 15.)

Mr. Schnake: I would like to read just a very short portion of the transcript of testimony in that matter to the jury at this moment, your Honor, so as to get the continuity of action.

(Testimony of William Moore.)

"Direct Examination by Mr. Rutherford:

"Q. Mr. Fong, will you state your name to the court, please? [280]

"A. My name is William W. Fong also known as Fong Wy Sum.

"Q. And where do you live, Mr. Fong?

"A. I live 1050 A Street, Sparks, Washoe County, Nevada.

"Q. When did you come to Washoe County, Nevada?

"A. I came here September 9, 1952.

"Q. Since that time have you been a continuous resident of the State of Nevada?

"A. Yes, sir.

"Q. When you came to the State of Nevada was it your intention to make Washoe County your residence for an indefinite period?

"A. Yes, sir.

"Q. Does that intention presently abide with you? A. Yes, sir.

"Q. What is your wife's name?

"A. Gee King Yip Fong.

"Q. Where were you married?"

Then a description of the facts regarding the marriage, property settlement agreement.

"Q. Mr. Fong, you have alleged that your wife has treated you with extreme cruelty. Is that allegation true?

"A. It is true. We agree on the divorce [281] even twenty years ago, but we just hang on on ac-

(Testimony of William Moore.)

count of the child, and for this last twenty years, oh, all I get, the silent treatment.

"Q. She wouldn't speak to you, was morose and sullen?

"A. Well, doesn't care what I do, just no care for me.

"Q. How has that course of conduct affected your health?

"A. Well, mentally I am just—lose all my ambition. Physically, just—well, when a woman doesn't care for you, you just run the—it just run your health down. That is all.

"Q. You don't believe you were in any way responsible for her conduct in relation to you?

"A. No. As a matter of fact, she move out on me before I even started on the divorce."

Now, at this time also, your Honor, we will offer in evidence the original statement of Robert L. Levy, a copy of which has been exhibited to counsel, and may I have a stipulation that this is a true and correct transcript of the statement that was taken of your client, Mr. Robert Leonard Levy, on October—(inaudible to the Reporter).

The Court: I don't hear you, Mr. Schnake, and I am sure the jury doesn't. [282]

Mr. Schnake: May I have a stipulation that this is a true and correct copy of the questions and answers given in a statement of Robert Leonard Levy on April 3, 1956, at the United States Courthouse and Post Office Building.

(Testimony of William Moore.)

Mr. Burns: We so stipulate, your Honor, no objection to it going in evidence.

The Court: Exhibit 16.

(Thereupon the foregoing statement of Robert Leonard Levy of April 3, 1956, was marked and introduced into evidence as Government's Exhibit No. 16.)

Mr. Davis: Is this being offered against my clients?

Mr. Schnake: Yes.

Mr. Davis: Then I object to the introduction of it in evidence as against my clients.

The Court: The date of this was April 3, 1956?

Mr. Schnake: That is correct, your Honor, on the same basis that we urged before as being not an admission by the party but as a verbal act in furtherance of the conspiracy in the attempt to conceal the original conspiracy and to attempt to prevent the deportation of Chin Bick Wah, that this is another act in furtherance of the conspiracy and it would be offered to show the testimon , not as admissions of the implicit conduct, but in furtherance of the conspiracy and the discrepancy between the testimony, rather the statement of Mr. Lev, and the statement of Mr. Fong, which has just been given, will be offered as showing proof of the [283] conspiracy by the discrepancies rather than any admissions.

The Court: Well, it will not be admitted as any statement of the defendant Levy, any declaration of

(Testimony of William Moore.)

the defendant Levy against the defendants Fong or Chin Bick Wah; it may be received for such proof, if it is such proof, of the establishment of a conspiracy.

Mr. Burns: If your Honor please, while I stipulated with Mr. Schnake that he would not be required to lay a foundation for this statement I didn't expect Mr. Schnake to make any such statement as he just did before this jury characterizing the statement of Mr. Levy as being some act in furtherance of this conspiracy, and I would request that your Honor explain to the jury that Mr. Schnake's characterization is his own conclusion.

The Court: The statements of counsel are not evidence and are not to be considered by the jury as evidence. The evidence comes solely from the witnesses upon the witness stand and the jury is to disregard statements of counsel upon either side which are made as statements of fact unless there are stipulations between the parties covering it.

Mr. Schnake: At this time I would like to read to the jury a few statements out of the statement of Mr. Robert Leonard Levy commencing on page two.

Mr. Burns: Pardon me, Mr. Schnake.

If Mr. Schnake at this time is going to read certain [284] portions I assume I will have the right to read any portion myself.

The Court: You may. Counsel on either side may read such portions of the statement to the jury as they may desire.

(Testimony of William Moore.)

Mr. Burns: And might I inquire, are you finished with the witness on the stand?

Mr. Schnake: No, I have some further questions to ask him.

"As far as my connection with this matter entirely is this: Yee, Jonathan Yee, I knew since 1941 or '42 before he went into the Army. He was working on a ranch in Sonoma, that his first was there so——

"Q. You knew he was a cousin of Mr. Fong?

"Mr. Levy: Some connection—whether cousin or any relative, I don't know, but I assumed that. I met him and he was working on this ranch that Mr. Fong had with a man by the name of Mint—they were running a dairy ranch—milk cows—Yee was working there, and afterward I was told he went into the Army—about the time that this divorce thing came up.

"Q. Divorce between Jonathan Yee and his wife?

"A. Yes. I was asked if I knew an attorney out of the state, in Reno. I had a correspondent in Reno by name of T. J. Rutherford—his address is [285] 16 East 2nd Street. You have that in your file?

"Mr. Schnake: Yes.

"Mr. Levy: The letter of introduction I gave to Yee to Mr. Rutherford is in Mr. Moore's file—I presume you have the file—and as far as any other connection with Yee—that was the end of it. I did talk to her one night—his wife—I think after he

(Testimony of William Moore.)

came back from Hong Kong, and she was going to commit suicide—she was in love—they had two children.

"Q. One or two?

"A. She was going to take the kid and drive off the Land's End—or Half Moon Bay, or some place. That is the last I heard of the whole situation. I also knew that Mr. Fong married a woman who came in here, and the fact that he asked me if I knew a judge who would marry them, and I sent them to Judge John B. Molinari, and they were married—he is a personal friend of mine. That's my whole story so far as my connection with these people."

On page 17, after a question regarding a $250.00 fee.

"Mr. Gillard: Any other fees since then?

"A. Not a penny.

"Q. So you feel that your records will show the only fee you received from William Fong will [286] be the $250.00?

"A. Since 1950. I may have gotten a loan from Bill at one time or another which has been paid.

"Q. Do you know what year that was in?

"A. I have no idea.

"Q. Was it before 1950?

"A. Oh, yes, a long time ago. I mean I would be short and I would borrow $100.00, $50.00, or a few dollars when my bank account would be low and I would go over and ask Bill and he would give me a check. I have seen no fees except that $250.00.

"Q. Was that before 1950?

(Testimony of William Moore.)

"A. Probably just before that—maybe quite a while before that.

"Q. So that the only money that has ever been paid by Fong to you since 1950 is the sum of $250.00?

"A. I think that was the fee—probably court costs."

On page 27 a statement by Mr. Levy.

"Mr. Levy: I wasn't concerned in any love life or marital life of Johnnie or anyone.

"Q. Speaking on that subject, when Fong got his divorce from Gee King Yip, you had discussed that matter on quite a few occasions with Fong?

"A. He went up there without my knowledge. I [287] don't know.

"Q. So it is your recollection that Fong had never discussed this matter?

"A. He had told me had trouble with his wife and that his wife went out and lived with his daughter. He told me that she couldn't speak English and that he was ashamed to go out with her and that she was anti-social and she could go."

"Q. And you have no additional knowledge as to this occurrence of Jonathan Yee marrying the woman in Hong Kong, her divorcing him, and the fact that William Fong's wife was in the hospital, and that you that the events had taken place?

"Mr. Levy: I suspected it.

"Q. When did you first suspect it?

"A. When Bill Fong called me up and said an

(Testimony of William Moore.)

Immigration officer had called on him. About a week or ten days.

"Q. But until about a week or ten days ago you had no suspicion, no direct knowledge?

"A. No direct knowledge.

"Q. Well, did you have any indirect knowledge?

"A. Well, only what anybody would have told me. Does that answer your question? [288]

"Q. At present I am not clear whether you had any direct or indirect knowledge of the chain of events that have taken place.

"A. I know that he was divorced from Jean Yee. I know that he had married this other woman.

"Q. Now then, did you know that this woman who came back with him had married William Fong?

"A. I don't remember. I know I heard Bill got married.

"Q. And of course you knew that he had divorced Gee King Yip?

"A. No. I did not know until after he told me. At the time he married Chin Bick Wah. It might have been before that, because I think he had no money. He had gone to Reno and gotten a divorce. I didn't have anything to do with that. Neither did I have anything to do with this divorce you heard this other woman got. That is Fong's business. I don't know what attorney she went to. Did Rutherford handle that?"

Mr. Burns: Pardon me, Mr. Schnake. At this

(Testimony of William Moore.)

time I would like to read certain portions of this statement.

The Court: All right.

Mr. Burns: I will take up from the same page Mr. Schnake was reading from, ladies and gentlemen, which is page 34, his [289] last response was that answer by Mr. Levy?

"No, no."

Mr. Schnake then asked Mr. Levy this question: "And today is the first time that you had any indication of a prior arrangement between Fong and Yee?

"Mr. Levy: I did not know of any prior arrangement. Absolutely nothing, Mr. Schnake. I received no money, I had no conversation about it. I am not an immigration attorney. I don't know the laws relevant to immigration entries and I did not advise Fong or anybody else along those lines."

I would like to likewise read a few questions previous to the ones Mr. Schnake read you, commencing on page 16 and ending on page 18 where he spoke about a $250.00 fee.

Mr. Schnake resumes the questioning of Mr. Levy after Mr. Gillard, who I believe you will stipulate is also an Assistant United States Attorney.

Mr. Schnake: Chief Assistant United States Attorney.

Mr. Burns: "Mr. Schnake: The facts indicate that this conversation took place before Jonathan Yee went to Reno, in the early part of 1951. Jonathan Yee got his divorce in May, 1951, and this con-

(Testimony of William Moore.)

versation is alleged to have taken place in the [290] early part of 1951, and the information indicates that the statement was made by you that the only way in which the matter could be handled would be for Jonathan to get a divorce from Jean in Reno and that he could remarry Jean Yee after he brought the woman back from Hong Kong.

"Mr. Levy: I never made any such statement. Such a s.o.b. of a statement to make. I never made any such statement. If Johnnie Yee and Jean Yee claim that is so, it is a flat lie. Someone else may have said that. I was not retained to do anything and I was not paid anything and common sense would indicate that for $62.00 or $82.00 I certainly would not stick my neck out.

"Mr. Gillard: Since you are so clear on the point that you did not receive any fees from Fong in connection with that matter, would you be willing to allow an investigator from the Immigration and Naturalization Service to examine your books or receipts of fees from clients during that period?

"Mr. Levy: I don't know if I have. Any time Fong gave me anything it was by check.

"Mr. Gillard: You never received any cash at any time? [291]

"Mr. Levy: He gave me a check. He banks with the Bank of America on Columbus Avenue. I don't know whether I have that record. My files are open. I have nothing that I want to deceive you about.

"Mr. Gillard: You maintain a system for receipts?

(Testimony of William Moore.)

"Mr. Levy: I use slips.

"Mr. Gillard: You use a system of slips showing who paid you fees?

"Mr. Levy: That's right. I can show you that what I received was in no way connected with Johnnie Yee's divorce, with the exception of the referral fee from Rutherford. That is the only fee I have ever seen. I received a fee of $250.00 when I commenced this proceeding—it is now pending—for Bill Fong's mother. He gave me a check for that.

"Mr. Gillard: What year?

"Mr. Levy: I guess about 1953. It would be August, 1953. I think I can find out from my file. The fee was not for the Salinas matter because I was already paid. The way I got it I attached some real estate in Salinas. That case is still pending. Bill Fong's mother could not go on the witness stand because she was sick.

"Mr. Gillard: You received $250.00?

"Mr. Levy: At the time the suit was filed. [292]

"Mr. Gillard: Any other fees since then?

"Mr. Levy: Not a penny."

Thank you.

The Court: Proceed, Mr. Schnake. There is a witness on the stand. Let's examine the witness.

Q. (By Mr. Schnake): Now, referring to this divorce that has been mentioned in both these statements, Mr. Moore, in the first conversation that you had with Mr. Fong was there any reference to Mr. Fong's residence in Nevada and the witnesses?

A. Yes. Mr. Fong was asked if he had resided

(Testimony of William Moore.)

for the entire six weeks period in Reno in connection with that divorce, and he insisted that he had.

He was asked if he paid any or made any payment to the witness that appeared for him in his divorce action and he stated that he had not, that he had given the man $100.00 or $150.00, but that was in the nature of payment for board and room, because he had lived at this man's home.

Q. Now, in the two conversations that you have described, I believe you have referred to Mr. Levy in connection with the divorce of William Fong against Gee King Yip. Is your recollection clear as to what Mr. Fong said regarding the subject of Mr. Levy's connection with that divorce on both of these conversations?

A. In regard to the divorce of William Fong from Gee King [293] Yip, Mr. Fong stated that he and Mr. Levy had gone together to Reno, Nevada, and that there Mr. Levy had introduced him to an attorney Rutherford who had handled the divorce proceedings for him.

Mr. Schnake: Thank you. That's all.

Cross-Examination

By Mr. Burns:

Q. Mr. Moore, you were asked if you had refreshed your recollection about this conversation, and have you?

A. Which particular—you mean the conversations of Mr. Fong?

(Testimony of William Moore.)

Q. That's right. A. Yes, I have.

Q. What did you use to refresh your recollection?

A. Notes that I had taken during the interviews.

Q. When did you examine those notes?

A. Several times, the latest was before I came in court this morning.

Q. Do you have them with you?

A. I don't have them in my possession right now.

Q. Could you obtain them for us?

A. I can.

Q. Would you?

A. The notes are apparently upstairs. [294]

Q. You needn't bother, you can get them at the recess.

The Court: Is this a copy of them here?

Mr. Schnake: This is a memorandum prepared from them.

The Witness: That is a report I made from the notes to the United States Attorney immediately after the interview.

Mr. Burns: I am not asking for the working papers of the United States Attorney, your Honor, but if this witness did use notes I think we are entitled to see them.

The Court: I think you are.

Mr. Schnake: We will produce them as soon as they can be——

(Testimony of William Moore.)

The Court: Have somebody go get them now. The witness is on the stand.

Q. (By Mr. Burns): Mr. Moore, in direct examination you just concluded by saying that Mr. Fong, in this conversation that you last testified about, told you that he and Mr. Levy had gone to Reno together and that he, Mr. Levy, had introduced him, Mr. Feng, to Mr. Rutherford, is that correct? A. That's right.

Q. Now, prior to the time you had a conversation with either Mr. Levy or Mr. Fong, you had had a conversation with Mr. Rutherford, had you not?

A. That's right.

Q. Now, Mr. Rutherford told you that he had received a letter written by Mr. Levy introducing Jonathan Yee, had he [295] not?

A. That's right.

Q. Did Mr. Rutherford tell you that Mr. Levy had brought Mr. Fong into his office?

A. I don't recall that that came up during the conversation with Mr. Rutherford.

Q. Didn't you question Mr. Rutherford about the two divorces, the one of Johnnie Yee and the one of William Fong? A. Yes, I did.

Q. Did you ask Mr. Rutherford who introduced Mr. Fong to him, or who referred him to him?

A. I asked who—wait a minute. Let's see just how that did come up. We had discussed Jonathan Yee's divorce and had a request from Jonathan Yee for Mr. Rutherford to make any information he

(Testimony of William Moore.)

had available in his file, to make it available to us to use.

Mr. Schnake: Mr. Burns, may I interrupt? I will offer at this time the Fong versus Fong file for your use, Mr. Burns, with the notation Robert Levy on the outside of the file, and you may cross-examine Mr. Moore regarding the entry on that file, if you desire to.

Mr. Burns: When I have an opportunity to examine it, I will do it.

Q. (By Mr. Burns): You had a note from Mr. Yee to his attorney Mr. Rutherford, authorizing you to receive that file, [296] is that correct?

A. I did.

Q. You examined the file, is that correct?

A. Yes, I did.

Q. Now, you didn't have a note at that time, I assume, from Mr. Fong authorizing you to receive from Mr. Rutherford the file in the Fong case, did you? A. No, I did not.

Q. But you did ask Mr. Rutherford some questions about this matter? A. Yes, I did.

Q. Did you not? A. Yes, I did.

Q. At that time did Mr. Rutherford tell you that Mr. Fong had come into his office in the company of Mr. Levy?

A. That was never brought up, sir.

Q. Well, did Mr. Rutherford tell you that Mr. Levy had referred him to Mr. Rutherford?

A. He did.

Q. Now, as a matter of fact, Mr. Moore, you

(Testimony of William Moore.)

know that the date that Mr. Levy and Mr. Fong went to Reno, Nevada, was April 6 and 7 of 1951?

A. I don't know the date.

Q. And that you are quite accurate in your recollection of the conversation with Mr. Fong that he said that the time they [297] made the trip was in 1953, is that correct?

A. I don't know that Mr. Fong specifically stated the date that they had made the trip.

Q. So when you tell the ladies and gentlemen of the jury that they went up there together in connection with the Fong divorce, you are not certain as to the date of the trip, is that correct?

A. Mr. Fong did not state the date that I recall.

Q. But you are quite certain that Mr. Fong did say that the purpose of the trip was in connection with the Fong divorce? A. That's right.

Q. You recall that from your examination of your notes this morning, is that correct?

A. Yes, sir.

Q. Now, how long have you been an investigator for the Immigration and Naturalization Service?

A. I have had the title of investigator since about June of 1951.

Q. How long with the Department?

A. Since September 27, 1940.

Q. Now, what period of time have you spent investigating the facts of this case, Mr. Moore? [298]

A. I first started late last fall with Mr. Prather, and then I was inactive on this case for a period of time, and I would say approximately six weeks

(Testimony of William Moore.)

to two months before the indictment was returned, that I became very active again in this case.

Q. During that course of time you have interviewed a number of people, have you not?

A. Yes, I have.

Q. Now, when was the first meeting with Mr. Levy? A. April 3, 1956.

Q. That was eight days before the indictment, is that correct? A. I believe so.

Q. Now, how did you arrange that meeting, or did you?

A. I telephoned Mr. Levy and asked for an appointment to talk to him.

Q. Now, would you tell us what you said to Mr. Levy over the telephone, Mr. Moore?

A. I don't recall exactly what I said. I did identify myself by name and by my position, and stated that I would like to see him at his earliest convenience. I don't recall that I said anything more at that time.

Q. You said, "Mr. Levy, this is Mr. Moore from the Immigration Service and I would like to see you at your earliest convenience," is that correct?

A. Essentially, yes, sir.

Q. Did Mr. Levy say, "Well, I don't know anything about [299] immigration matters, what's it about?"

A. I don't recall whether he did or not.

Q. Did you advise him over the telephone that it was about the Fong case, can you tell the ladies and gentlemen of the jury that?

(Testimony of William Moore.)

A. I don't believe I advised him it was about the Fong case.

Q. Anyway, you can tell the ladies and gentlemen of the Jury that Mr. Levy said come right over?

A. I couldn't say that he said exactly that, but he showed no hesitation in wanting to see me. I don't recall whether he said come right now, and the immediate time was inconvenient to me, or whether he said he was pressed and 10:00 o'clock next morning was the earliest that he—that is, in effect.

Q. Mr. Moore, so we can get the picture straight, didn't you phone him the morning of April 3, 1956?

A. I don't recall whether I did or not; possibly I did.

Q. What time you arrive at your office?

A. At 8:30 in the morning.

Q. You did see Mr. Levy on April 3, 1956, at approximately 9:30 in the morning, didn't you?

A. I believe it was approximately 10:00 o'clock; it might have been a little earlier.

Q. Your notes would reflect what time it was?

A. They should.

Q. Would your notes likewise reflect when it was you made [300] the phone call?

A. I don't believe that is in the notes.

Mr. Schnake: We have the notes, now, Mr. Burns, if you would care to examine them and show them to the witness.

Q. (By Mr. Burns): Now, anyway, you went

(Testimony of William Moore.)

over early in the morning of April 3, is that correct? A. Yes, sir.

Q. And in the company of Mr. Prather?

A. That's right.

Q. You told Mr. Levy after you had introduced yourself that you wanted to talk to him about the Fong case, isn't that correct?

A. I believe we started by asking Mr Levy about Jonathan Yee.

Q. You asked him if he knew Jonathan Yee?

A. I believe so.

Q. What did he tell you? A. That he did.

Q. Did he tell you that he had referred him to the attorney in Reno by the name of Rutherford?

A. I believe he did.

Q. Now, at that time you had in your possession the file that you had obtained from Mr. Rutherford, is that correct?

A. I don't recall whether I had it my immediate possession, but I did have possession of the file. I mean by that, I [301] don't recall if I took the file with me to Mr. Levy's office.

Q. When you asked Mr. Levy about Mr. Rutherford, you already knew that Mr. Levy had written a letter for Johnny Yee to take to Mr. Rutherford, did you not? A. That is right.

Q. When did you show that letter to Mr. Levy?

A. I don't recall exactly when we did show it to Mr. Levy.

Q. Do you recall that you showed it to him in his office?

(Testimony of William Moore.)

A. I don't precisely recall, Mr. Burns.

Q. Now, prior to the time you started asking him questions about Johnny Yee, did you ask him any questions about his law practice?

A. Possibly, in a general sort of a way.

Q. You recall, Mr. Moore, that Mr. Levy told you that his practice was of a civil nature in the field of law? A. That is right.

Q. That he didn't handle any criminal matters?

A. That's right.

Q. And that he didn't handle any immigration matters?

A. He told me that he had only handled, only had one immigration case, and that he had referred to someone else.

Q. And he told you that was some 25 years ago and that he got into the immigration case and he had to call for help, isn't that correct? [302]

A. As I recall it, he said about 1940.

Q. But it was some time previously, was it not?

A. Yes, sir.

Q. You then can't recall when it was you discussed with Lim the letter he had written for Jonathan Yee to take to Mr. Rutherford?

A. Not precisely.

Q. He told you, did he not, that Johnny Yee had come into his office and picked up the letter?

A. I don't recall whether Mr. Levy made that statement or not, sir.

Q. He told you, did he not, that Mr. Yee had

(Testimony of William Moore.)

informed him that over a long period of time he and his wife, Jean, had had domestic difficulty?

A. I don't recall Mr. Levy saying that.

Q. Did he tell you what fee he had received from Mr. Rutherford?

A. The fee was mentioned. I don't recall for sure whether Mr. Levy told me or whether it was Mr. Rutherford told me.

Q. If it had been Mr. Rutherford, you would have had already that knowledge?

A. I would have.

Q. Did you examine Mr. Rutherford's books to verify the fact he had sent a referral fee to Mr. Levy and what the amount was? [303]

A. No, sir, we did not.

Q. Now, did you ask Mr. Levy concerning the power of attorney that Jean Yee signed?

A. Yes, that was discussed with him.

Q. Did he tell you that when the power of attorney had been received from Mr. Rutherford, as indicated in the file that you had, that Mr. Fong took it and had it signed by Jean Yee?

A. I don't recall who he said had taken it. I believe it was Mr. Fong. But he did indicate that it wasn't signed in his presence.

Q. He indicated that he didn't recall whether he had given it to a process server to take out and have signed by Jean Yee, or whether Bill Fong had picked it up and had it signed, is that correct?

A. Some mention was made of a process server,

(Testimony of William Moore.)

I recall that in connection with this matter, but I don't recall exactly what was said, sir.

Q. You can recall this, can you not, Mr. Moore: That Mr. Levy told you unequivocally that he didn't get the document signed by Jean Yee and didn't have any conversation with her concerning her signing it? A. That's right.

Q. And that power of attorney you had already seen in the file, had you not?

A. Yes, sir [304]

Q. That authorized an attorney in Reno, Nevada, to appear for Mrs. Yee and not contest the divorce action, didn't it?

A. Could I refer to——

Q. You certainly may.

Mr. Schnake: I don't believe that power of attorney is in that file, Mr. Burns.

The Witness: There doesn't seem to be a copy of the power of attorney in this file.

Mr. Burns: May we have this marked for identification as Defendants' Exhibit next in order, your Honor?

The Court: Exhibit C for identification.

(Thereupon the power of attorney was marked Defendants' Exhibit C for identification.)

Q. (By Mr. Burns): I will show you here, Mr. Moore, this document which has been marked Defendants' Exhibit C for identification, purportedly a photostatic copy or authenticated copy of a docu-

(Testimony of William Moore.)

ment on file in Washoe County, Nevada, in the case of Yee versus Yee. Could you tell the ladies and gentlemen of the Jury if you saw the original of that, or that copy, before?

A. I have seen this copy before; I don't know whether I saw the original or not, sir.

Mr. Burns: We at this time will offer it in evidence, if your Honor please.

The Court: It may be admitted and take the same number.

(Thereupon the power of attorney previously marked Defendants' Exhibit "C" for identification was received in evidence.) [305]

Q. (By Mr. Burns): When you did examine that document before, Mr. Moore, you determined that Mrs. Yee, by executing this document, had appointed one R. K. Wittenberg, Reno, Nevada, to act as her attorney in the case of Jonathan K. Yee versus Jean Yee in the Second Judicial District in Nevada, is that correct? A. Yes, sir.

Q. You questioned Mr. Levy on April 3, 1956, concerning the execution of that by Mrs. Yee and what he knew about it, did you not?

A. I believe so, sir.

Q. You can't recall whether he told you he had received it from Mr. Rutherford and sent it out by a process server or that Mr. Fong received it from Mr. Levy and had it signed by Mrs. Yee?

A. I don't recall exactly; it was one or the other.

Q. You do recall you asked him concerning the

(Testimony of William Moore.)

notary public acknowledgment that is on that document? A. I did.

Q. By an L. H. Condon, I believe it is?

A. The name is Condon.

Q. You asked concerning her identity, is that correct? A. The question was asked.

Q. He told you, did he not, that was a notary public that had an office in the building where he maintained his law office? [306]

And when it was received back in his office, he took it down and had it notarized, isn't that correct?

A. I don't recall him saying that he took it down and had it notarized. I recall that he mentioned Mrs. Condon had, I think, a notary office in the same building, and that she had died.

Q. He told you then, did he not, that he had sent the document on to Mr. Rutherford at Reno, Nevada? A. I believe so.

Q. You already knew that from your interview with Mr. Rutherford, did you not?

A. Yes, sir.

Q. And Mr. Levy told you during the course of your interview with him on April 3, 1956, that he had only had two conversations with Jean Yee?

A. Yes, sir.

Q. And that both of them occurred subsequently to Jonathan Yee's return from Hong Kong, isn't that so?

A. I don't recall whether he said subsequent to

the return from Hong Kong or subsequent to the divorce.

Q. Well, can you recall that he told you that there were no conversations with Jean Yee at any time prior to Johnny Yee's going to Reno?

A. I believe he did say that.

Q. Do you recall he told you that the subject matter of the [307] two conversations with Mrs. Yee was that she wanted to get her husband back?

A. In essence I believe that is correct.

Q. Do you recall in one of the conversations he told you she had made threats of suicide?

A. Yes.

Q. And that he had counseled and advised her against it and gave her other fatherly advice, is that correct?

A. I don't recall him stating anything about fatherly advice or advice that he had given her at that time.

Q. Neither of those conversations were in his office, did he tell you that?

A. I believe he stated one was by telephone and one was in the vicinity of Mr. Fong's store.

Q. Did he tell you that one of them was in Mr. Fong's automobile when Mr. Fong was driving Mrs. Yee home from the store? A. Yes.

Q. Now, did you ask to examine any of Mr. Levy's records while you were in his office on that morning?

Mr. Schnake: Which morning are you referring to?

(Testimony of William Moore.)

Mr. Burns: April 3, 1956.

A. April 3—I don't recall that the question was asked.

Q. Now, Mr. Moore, on that same day Mr. Yee came to see Mr. Schnake and other members of the United States Attorney's staff, is that [308] correct. A. What day?

Q. April 3, 1956.

Mr. Schnake: Did I understand your question correctly, Mr. Burns, Mr. Yee?

Mr. Burns: Mr. Levy I mean.

A. Oh, yes.

Q. (By Mr. Burns): How was that brought about?

A. When Mr. Prather and I were in Mr. Levy's office, we informed him that we had been asked to contact him by the United States Attorney and ask him questions about these things, and I don't recall just exactly how it came up, but the indication was made that Mr. Levy would like to talk to the United States Attorney. I don't recall whether Mr. Prather and I suggested he might want to, or whether the suggestion first was his.

Q. Now, Mr. Moore, you are an experienced investigator, aren't you? It was your duty, in connection with your position, to obtain, if you could, a statement from Mr. Levy, isn't that correct?

A. Yes.

Q. In written form? A. Yes.

Q. And conducted in a question and answer type of interview? A. That's right.

(Testimony of William Moore.)

Q. Having that in mind, Mr. Moore, will you recall now that [309] it was a fact that you suggested to Mr. Levy that he come to the United States Attorney's office?

A. That was our intent, to have Mr. Levy come to the Attorney's office. What I meant was, that I don't recall whether the question was posed such that Mr. Levy volunteered to come to the United States Attorney's office or whether we actually suggested it to him first.

Q. Mr. Moore, he volunteered; you didn't have to drag him up here in chains, did you?

A. No, sir.

Q. And wasn't it your duty to get a statement, if you could, from Mr. Levy?

A. That's right.

Q. And so you said, "Well, would you like to tell this story to the United States Attorney's office, or relate these facts to the United States Attorney's office?" A. Well, that was said, yes, sir.

Q. And you thereupon phoned Mr. Schnake from Mr. Levy's office, didn't you?

A. Yes, sir.

Q. Said "Mr. Levy is willing to give you a statement, and he wants to know if we can come up right now."

A. In effect, yes, sir.

Q. Well, in effect, Mr.——

A. I mean, that is generally—that wasn't the exact words [310] that were asked, but that was the gist of the conversation.

(Testimony of William Moore.)

Q. Mr. Levy didn't say, "I don't want to talk to you fellows about it; I want to talk to the United States Attorney"? A. No.

Q. And he didn't appear disturbed by talking to you?

A. No, not disturbed, as you would say, afraid, or anything like that.

Q. May not have been smiling.

A. I don't believe he was, sir.

Q. And so you brought him up here in this building in your own automobile in the company of Mr. Prather, did you not? A. Yes, sir.

Q. You introduced him to Mr. Schnake?

A. We did.

Q. And to Mr. Gillard? A. Yes, sir.

Q. You and Mr. Prather left, did you not?

A. That's right.

Q. Since that time have you been furnished with a copy of the statement Mr. Levy gave to Mr. Schnake and Mr. Gillard? A. I have.

Q. And you have examined it, have you?

A. Not very closely.

Q. Can you tell us if your examination was close enough to tell the ladies and gentlemen of the Jury that the statement [311] in question and answer form is in substance what Mr. Levy told you that morning in his office, except for greater detail?

A. That is kind of a hard question to answer.

Mr. Schnake: Your Honor, I will object to it as calling for his opinion and conclusion.

(Testimony of William Moore.)

The Court: He may answer; this is cross-examination.

A. I didn't examine that statement closely. My opinion would be that the verbal statement, or the things that Mr. Levy told us in his office and the things that are in the statement are quite similar.

Q. (By Mr. Burns): Well, Mr. Moore, you can tell us this, can you not: That in substance, when you interviewed Mr. Levy in his office on April 3, 1956, he told you he had nothing to do with the facts alleged in this indictment, except referring Jonathan Yee to Mr. Rutherford in Reno?

A. Yes, I believe that is right.

Q. And he likewise told you that Jonathan Yee wanted to get a divorce from a nagging wife?

A. I don't recall him saying that, sir.

Q. And he told you that he had absolutely nothing to do with the violation of any immigration laws, did he not?

A. I don't recall that he did say that, sir.

Q. Now, Mr. Moore, you've related conversations with Mr. Fong. Mr. Fong told you that Mr. Levy knew nothing about these matters contained in this indictment, did he not? [312]

A. That's right.

Q. Didn't Mr. Fong tell you when you asked if he would be willing to give a statement that he wanted to consult with his attorney?

A. He did.

Q. And who was that attorney?

A. Mr. Jackson, Z. B. Jackson.

(Testimony of William Moore.)

Q. And who was Mr. Jackson?

A. Mr. Jackson is an attorney here in San Francisco that practices primarily immigration law.

Q. And he is a member of the firm of Jackson and Hertogs? A. That's right.

Q. Located down on Washington Street, is it not? A. Yes, sir.

Q. Their secretary was the one that was here in court yesterday to testify?

A. Secretary Ruth Wilbur?

Q. That's right. A. Yes.

Q. And, Mr. Moore, it is a fact, is it not, that Mr. William Fong told you on some occasions he had referred people who had immigration problems to that firm, isn't that correct?

A. I believe so.

Q. Did Mr. Fong ever tell you Mr. Levy had been sent any clients in immigration matters? [313]

A. No. Mr. Fong told me that Mr. Levy didn't practice immigration law.

Q. You, as a member of the staff of the Immigration Bureau, knew that to be a fact, did you not?

A. Yes, sir.

Mr. Burns: That's all.

The Court: Take a recess at this time.

(Short recess.)

The Court: Proceed.

(Testimony of William Moore.)

Cross-Examination

By Mr. Davis:

Q. Mr. Moore, if I recall your testimony correctly, you stated that this first conversation with Mr. Fong took place on April 3, is that correct?

A. That's right.

Q. It was in an automobile in front of his store up on Stockton Street? A. Yes, sir.

Q. And that you and Mr. Prather were present, is that correct? A. That's right.

Q. At that time, isn't it a fact that he stated to you, about Chin Bick Wah, he said, "After Johnny brought Chin Bick Wah over, I fell in love with her," is that correct?

A. Would you repeat that, sir?

The Court: Read it, please.

(Record read by the reporter.) [314]

A. Yes, that is correct.

Q. Also that he began courting her after Johnny's and Helen's divorce?

A. I don't recall that he named a specific time on that, sir.

Q. Isn't it a fact that that is what you said yesterday in your direct examination?

A. I don't recall whether I said those exact words or not, sir.

Q. Now, when you asked him about Johnny's trip, Johnny Yee's trip to Hong Kong, he freely admitted to you, didn't he, that he bought the

(Testimony of William Moore.)

tickets? A. Yes, he did.

Q. He said he had given Johnny a $200.00 advance against his salary, in addition to the ticket?

A. Yes.

Q. And that he had given him a couple of months off? A. Yes.

Q. That he had done this because he was a trusted employee and had been with him for many years? A. Yes.

Q. He also told you, didn't he, that because he was an old employee, that he didn't take any notes or I.O.U. or anything from him?

A. He didn't state it was because he was an old employee, sir.

Q. Well, to the best of your recollection, what did he state as to a note or I.O.U.? [315]

A. That was the general meaning of what he stated. The idea that he was getting across, sir, that as an old employee, a person that he knew, that he had given him this money, or loaned it to him, as Mr. Fong said.

Q. He also told you that Johnny had not paid it back to him? A. Yes.

Q. Now, also, if I recall your testimony yesterday, you had some conversation about Mr. Fong sending money to Chin Bick Wah in Hong Kong?

A. Yes.

Q. Before she had come to this country, is that correct? A. Yes.

Q. Is it a fact that he told you that he sent her about $100.00 a month for two years?

(Testimony of William Moore.)

A. Yes, sir.

Q. It is a fact also, is it not, that he told you that he sent this money to her for the purpose of taking care of his sister-in-law and her nephews and nieces who were living in Hong Kong, isn't that correct?

A. I believe he said his nephews and nieces; that would be his sister-in-law's children.

Q. Yes. A. Yes, sir.

Q. Did he tell you that this sister-in-law and the children lived in adjoining homes to Chin Bick Wah on Far Yuen Street [316] in Hong Kong?

A. I don't recall that he told me, sir.

Q. He stated, did he not, that the reason he sent it to Helen was that his sister-in-law was a village woman and didn't understand how to use money properly in Hong Kong, is that correct?

A. That's right.

Q. Was it after this initial conversation that you asked him to make a statement?

A. Toward the termination of this initial conversation, sir.

Q. What did he say to that?

A. He said that he wanted to consult his attorney and would let us know later.

Q. He did call you, did he not, the next day, and said he had talked to his attorney, Mr. Jackson?

A. I don't recall whether it was the next day or the same afternoon, sir.

Q. He told you that Mr. Jackson told him to tell

(Testimony of William Moore.)

the truth but not to make a statement, is that correct? A. That's right.

Q. Referring to your testimony of today, is it a fact that—it is a fact, is it not, that Mr. Fong told you that he had shown his wife Chin Bick Wah's picture when his wife was in the hospital, is that correct?

A. He stated that he had shown the picture of Chin Bick Wah [317] to his then wife, Gee King Yip, in a hospital.

Q. Now, you also asked him certain questions about his relationship with his wife, isn't that correct?

A. I don't know that we asked him the questions; the answers were given.

Q. You mean he gave you answers without asking any questions?

A. Well, let's put it this way: As explanation of his present marriage to Chin Bick Wah, the reason that he had divorced his former wife, Gee King Yip. [318]

Q. If I recall your testimony correctly you said that he stated to you "I am quite a tricker and I told my wife that I should have three or four wives," is that correct? A. That's right.

Q. Did he tell you that his wife worked in the store with him?

A. I believe that was discussed—just a moment, though. Do you mean Gee King Yip or Chin Bick Wah?

Q. Gee King Yip.

(Testimony of William Moore.)

A. Yes, I believe that he did say so.

Q. Isn't it a fact that what he told you was that whenever his wife worked in the store, as he said, would gripe about work or money that he said, "I would always try to kid her out of it," and "I would say oh, you should just sit there at the cash register and be number one wife, and I'd have three or four other wives to do all the work for you." Isn't that the substance of what he said?

A. Not at that particular time when he referred to being a tricker.

Q. Well, did he say in substance what I just asked you?

A. I don't recall Mr. Fong saying that he tried to joke his w[illegible] out of moods, or anything like that.

Q. You can't recall him saying at any time during these conversations that he was kidding her about work and money when he told her; "Oh, I should have three or four wives and [319] you should be number one and just sit at the cash register?"

A. That one instance he referred to when we were talking about Gee King Yip being in the hospital and seeing that picture.

Q. Then did he say in substance what I have asked you?

A. He said, in effect, "I'm quite a tricker, I told her," and then he went on to say she should be the number one wife and sit at the cash register and have the other two or three wives to do all the work.

Q. You are sure he said "tricker" and not "kidder"?

(Testimony of William Moore.)

A. I am reasonably sure he said "tricker."

Q. You made notes, you testified you made notes of this interview? A. I did.

Q. Did you examine your notes during the recess just now? A. No, I didn't.

Q. But you did examine them this morning?

A. Yes.

Q. You don't know whether you made a note of that exact language of that conversation?

A. I examined a memorandum this morning that was verbatim from the notes and I am reasonably positive that the word "tricker" is there.

Q. These are your notes, Mr. Moore. Will you examine those and see if you can find the notations concerning that particular [320] conversation?

A. The word "tricker" is not in these notes.

Q. Now, after having refreshed your recollection from these notes, what is your best recollection as to the exact language used in that conversation?

Isn't it a fact that he said, "I am a great kidder and whenever my wife gets angry I tell her, oh, you ought to be number one wife and I have three or four other wives?"

A. No, I don't believe that's what he said.

Q. Now, in the first part of this conversation about Chin Bick Wah, directing your attention to that, when you questioned Mr. Fong he admitted to you, did he not, that he had tried to bring Chin Bick Wah over to this country as a student nurse?

A. He did.

Q. He told you that she had been a nurse with the

(Testimony of William Moore.)

Chinese Army and in the Canton Hospital in China, is that correct?

A. He didn't mention being a nurse in the Chinese Army—is that Canton Hospital a Methodist hospital, sir?

Q. I am not sure.

A. I believe he mentioned a Methodist hospital. I am not too positive about that.

Q. Didn't he say to you it was in the Canton Hospital?

A. I believe it was Canton that he mentioned.

Q. Then he told you, did he not, that the reason she couldn't [321] come in, at least one of the reasons she couldn't—I will withdraw that.

She took the English examination and couldn't pass, is that correct?

A. It was indicated she didn't receive a visa as a student because she had insufficient knowledge of English.

Q. When you questioned him about Johnnie going to Hong Kong, he told you, did he not, that Johnnie came to him and said he wanted to take a trip because his mother was ill?

A. I don't believe Mr. Fong mentioned anything about Johnnie's mother being ill.

Q. Do you recall what he did say about Johnnie wanting to take a trip?

A. Just that Johnnie wanted to take a trip.

Q. Didn't he tell you at that time that Johnnie and Jean were fighting all the time and that Johnnie

(Testimony of William Moore.)

was chippy-chasing and wanted to get away from Jean?

A. He stated that in essence, sir, but he didn't state that Johnnie wanted to get away from Jean.

Q. Did he say that Johnnie was chippy-chasing?

A. He did, and stronger.

Q. Pardon? A. He did.

Mr. Davis: Thank you. That is all, Mr. Moore. Thank you. [322]

Redirect Examination

By Mr. Schnake:

Q. Mr. Moore, Mr. Burns asked you regarding your conversations with Mr. Rutherford in Reno, particular reference to the Fong divorce.

Now, would you relate the entire conversation that you have already given part of with Mr. Rutherford regarding that matter?

A. As best I can recollect. I went to Mr. Rutherford's office with another investigator from the Immigration Service, Mr. Flanagan, stationed at Reno. We told Mr. Rutherford that we were interested——

The Court: This is not answering the question.

Q. (By Mr. Schnake): Would you relate the conversation that you had with Mr. Rutherford as it related to anything regarding the Fong file.

A. Just the Fong file?

Q. Would you tell us how that subject came up and what was said?

A. After we had talked to Mr. Rutherford about the Jonathan Yee case, I asked Mr. Rutherford if he

(Testimony of William Moore.)

had also represented Mr. Fong in the Fong versus Fong case, and he asked his girl to check the file. The girl brought the file and laid it on Mr. Rutherford's desk, and Mr. Rutherford, glancing at the outside of the file jacket said that this case was also referred to me by, I think he said Bob Levy. [323]

He said, "Are you interested in this case, too"?

I said, "Yes, sir, but I don't have a waiver of attorney-client relationship from Mr. Fong."

Mr. Rutherford then asked me, "Well, would you like to take this file?"

I said, "I don't have Mr. Fong's permission, but if you care to give it to me I will sign a receipt for the file."

Mr. Rutherford then removed one page from the file and said, "I don't want this to be in here, this is a letter by which I referred the fee in this case to Mr. Levy, but you are welcome to anything else."

Q. Did he say how much the referral fee to Mr. Levy was in this case?

A. I believe he said $66.00.

Q. Did he hand you that file? A. He did.

Q. Is this document the file which he handed you at that conversation? A. Yes, it is.

Q. Was the notation "Mr. Robert Levy" written on the outside of the file at the time you received it?

A. It was.

Q. Did you ask Mr. Rutherford as to whose handwriting that was? A. No, I did not. [324]

Mr. Schnake: We will offer this file in evidence at this time, your Honor.

Mr. Burns: No objection.

The Clerk: Exhibit 17.

(Thereupon, the foregoing divorce file in the case of Fong versus Fong was introduced and marked in evidence as Government's Exhibit No. 17.)

Q. (By Mr. Schnake): Mr. Moore, you were asked on cross-examination whether or not Fong had stated that Jonathan Yee had not paid back the $1300.00 for the ticket and the $200.00 advance on wages. Do you recall that question and answer on cross-examination? A. I do.

Q. Did Mr. Fong say anything about having asked for that money back? A. No, he didn't.

Q. You were asked on cross-examination whether or not your notes contained any exact word "tricker" with reference to Mr. Fong's statement, and you stated that there was no such word in your notes. Is the word "kidder" in those notes?

A. No, sir.

Mr. Schnake: That's all.

Recross-Examination

By Mr. Davis:

Q. Mr. Moore, then I take it that there is no exact transcription in your notes of this conversation as [325] to whether the word was "tricker" or "kidder"? A. Not in my notes, sir.

Mr. Davis: Thank you.

Recross-Examination

By Mr. Burns:

Q. Mr. Moore, you told Mr. Schnake that when you obtained the file, which is now Government's Exhibit No. 17, I believe from Mr. Rutherford——

A. That's right.

Q. ——Mr. Rutherford said that the case had been referred to him by Bob Levy.

A. I believe that is what he said, sir.

Q. He didn't tell you that Mr. Levy had brought Mr. Fong into his office, did he?

A. I don't recall him saying that, sir.

Mr. Burns: That is all.

Mr. Schnake: That is all.

The Court: All right, you may step down.

(Witness excused.)

Mr. Schnake: Mr. Eaneman.

R. G. EANEMAN

called by the Government. Sworn.

The Court: State your name, please.

The Witness: R. G. Eaneman. [326]

Direct Examination

By Mr. Schnake:

Q. Mr. Eaneman, are you an employee of the East Bay Municipal Utility District?

A. I am.

(Testimony of R. G. Eaneman.)

Q. As such are you one of the custodians of the service records of that company? A. I am.

Q. Do you have the service record for Mr. William Fong for 592 MacArthur Boulevard, in Oakland? A. I have a record.

Mr. Davis: Pardon me. If the Court please, I believe I know what the testimony is going to be elicited here, because Mr. Schnake and I discussed the possible stipulation, and at this time I would like to make an objection out of the presence of the jury to the introduction of this line of testimony.

It refers to overt act number 16 in the indictment.

The Court: You may make such objections you desire to make, Mr. Davis.

Mr. Davis: Well, I object to any testimony concerning the facts alleged in overt act 16, it is incompetent, irrelevant and immaterial and has no bearing on the issues of this case.

Mr. Schnake: It is the Government's position, your Honor, that that is the prime object of the conspiracy and the fact that that was done shows the accomplishment of the prime object. [327]

The Court: The objection may be overruled.

Q. (By Mr. Schnake): Mr. Eaneman, do you have that service record with you?

A. I have a record for service at 596 MacArthur.

Q. Excuse me, that is 596 MacArthur Boulevard?

A. That is correct. It is a record that shows that a William W. Fong applied for water service at that address on February 27, 1953. The service was

(Testimony of R. G. Eaneman.)

turned on. Bills were rendered in Mr. Fong's name until September 23, 1955.

Q. Thank you. May I have that service record, please?

Is it the regular course of your business to maintain such service records as to water service?

A. That's correct.

Q. Is it also the regular course of your business to make the entries regarding the commencement of water service at or near the time the service is started?

A. That is the date that the service was requested and the date that appears upon there, that is our permanent record on that account on that meter.

Mr. Schnake: The Government will offer this in evidence as our exhibit next in order.

Mr. Burns: On behalf of the defendant Levy we will object to its being introduced as against him, if your Honor please.

The Court: The objection may be overruled and it may be [328] admitted and marked Exhibit 18.

(Thereupon, the foregoing records concerning the water service at 596 MacArthur Boulevard were admitted and introduced in evidence marked as Government's Exhibit No. 18.)

Mr. Schnake: That's all.

The Court: Any questions?

Mr. Davis: I have no questions.

The Court: That's all.

Mr. Schnake: I understand you have a copy of

that record, Mr. Eaneman?

A. No, I don't. That is the original record.

Mr. Schnake: All right. The record will be returned to you at a later time.

(Witness excused.)

Mr. Schnake: Mr. MacDonald, please.

WILLIAM J. MacDONALD

a witness called by the Government. Sworn.

The Court: State your name, please.

The Witness: William J. MacDonald, 275 Flagstone Terrace, San Rafael. I am employed as a manager with the Pacific Telephone and Telegraph Company, on special assignment to Mr. Douglas Hayden, Chief Special Agent.

Direct Examination

By Mr. Schnake:

Q. As an employee of the telephone [329] company, are you one of the custodians of the service records of the telephone company?

A. I am, sir.

Q. Do you have with you, in response to a subpoena duces tecum, a service record for William W. Fong, at 596 MacArthur Boulevard, Oakland, for some period of time? A. I do, sir.

Q. Would you produce—I believe you have photostatic copies of those records, as well as the originals, is that correct?

A. That is correct, sir.

Mr. Schnake: In view of the fact that the orig-

inals are rather bulky and I would hesitate to introduce the telephone book into evidence, will counsel stipulate that the copies of these original records may be used?

Mr. Davis: So stipulated.

Mr. Burns: Yes. If they are going to be offered against Mr. Levy, of course, we will object.

Q. (By Mr. Schnake): Will you hand me the original of such records? Will you elaborate as to what those records mean and which of those relate to the particular period of time from about February or March of 1953, on up through October of 1953?

A. The service was apparently installed during the period between March 11 and April 11 of 1953, under the name of William W. Fong, at 596 MacArthur Boulevard, Oakland 10, California, under the telephone number of Twin Oaks 3-9443. [330]

Q. Did that telephone service under that same name and listing continue at least through October of 1953?

A. The telephone service; the number was changed. It appears in our street address directory, in the May, 1953, issue under the telephone number of Twin Oaks 3-9443. However, in the June, 1953, issue the telephone number was changed to TEmplebar 2-4073, so it would indicate that the number had been changed during the period between May 1 and May 31st.

Q. Was there any change in the persons for whom that listing was held?

A. Service continued under the name of William W. Fong.

(Testimony of William J. MacDonald.)

Q. Could you hand me the particular copies of records that just pertained to the service from March 11, 1953, to October of 1953?

A. (Witness producing papers): This is a copy of the first bill that was prepared. This was the April directory where they are not identified inasmuch as——

The Court: Keep your voice up.

The Witness (Continuing): This did not appear in the April directory because of apparent delay in getting to our directory department. However, it does reflect in the May, 1953, street address directory under the number of Twin Oaks 3-9443.

Q. (By Mr. Schnake): All right.

A. June, 1953, it appears under TEmplebar 2-4073 number, sir. [331] July——

The Court: Counsel, let's shorten this up now.

Mr. Schnake: Yes.

Q. Are these documents that you have here the current listings during those months?

A. They are, sir.

Q. Of 1953. These photostatic copies of bills and listings for the period from March 11, 1953, through October of 1953, will be offered in evidence as one composite exhibit.

Mr. Burns: Same objection on behalf of the defendant Levy.

The Court: The objection may be overruled. Exhibit 19.

(Thereupon the foregoing service records of telephone service for William W. Fong, were

(Testimony of William J. MacDonald.)

marked and introduced into evidence as Government's Exhibit No. 19.)

Mr. Schnake: Thank you.

Mr. Davis: No questions.

The Court: Thank you very much.

(Witness excused.)

Mr. Schnake: Mr. Bowers.

Mr. Davis: If the Court please, if this witness is the same as the last two as to records and service applied to this address on MacArthur Boulevard, we will gladly stipulate to that

Mr. Schnake: Will you stipulate that the records of the City Gas and Electric Company would show service in the name [332] of William W. Fong, for the period from March, 1953, through October of 1953?

Mr. Davis: Yes.

Mr. Schnake: All right, in view of that stipulation, Mr. Burns——

Mr. Burns: We will stipulate with reference to the records, your Honor.

The Court: Admitted subject to your objection, which may be overruled.

Mr. Schnake: In view of that fact, it will not be necessary for you to testify, Mr. Bowers.

The Court: What is your name, please?

The Witness: Mr. Bowers, Charles Bowers, Pacific Gas and Electric Company.

The Court: All right, thank you very much.

Mr. Schnake: I don't even need the records now. You can take all of the records back with you.

Mr. Verginio Curti.

VERGINIO CURTI

a witness called by the Government. Sworn.

The Court: State your name, please.

The Witness: Verginio Curti. [332-A]

Direct Examination

By Mr. Schnake:

Q. Mr. Curti, speak very loud so the people over in the back of the jury box can hear you.

Mr. Curti, where do you live?

A. 592 MacArthur Boulevard, Oakland.

Q. How long have you lived there?

A. Since 1940.

Q. Are you acquainted with William Fong?

A. Yes, I am.

Q. Can you point him out in the courtroom here today? A. There he is. (Indicating.)

Q. The man sitting at the table with counsel. All right. Are you acquainted with Mr. Fong?

A. Yes, I am acquainted with him.

Q. Do you recall, Mr. Curti, the fact that the house next to you was sold in about 1952, the fact that it did occur? A. Yes, it was sold; yes.

Q. Were you well acquainted with the owner of that house, Mrs. Wilson? A. Yes.

Mr. Schnake: Now, the Government will offer in evidence at this time the certified copy of a deed

(Testimony of Verginio Curti.)

from Nellie Wilson to William Fong, or William W. Fong, an unmarried man, dated March 6, 1953, and recorded March 11, 1953, concerning certain [332-B] real property in the County of Alameda.

The Court: Exhibit 20.

(Thereupon, the foregoing certified copy of deed involving Nellie Wilson and William W. Fong re real property in the County of Alameda, Calif., was marked and introduced into evidence as Government's Exhibit No. 20.)

Q. (By Mr. Schnake): Now, with particular reference to this closing of Mrs. Wilson's real estate transaction, the sale of her house next door to yours, do you recall seeing Mr. Fong around that property?

A. Oh, yes, I have seen him around the property; yes.

Q. Immediately after the sale of the property and the closing of the transaction, did anybody move into the property?

A. I wouldn't know just when, I didn't know just when that sale was completed; that is from recollection, and I wouldn't know how soon afterwards that Mr. Fong was there.

Q. Now, can you recall seeing anyone cleaning up and painting around that place? A. Yes.

Q. How long after Mrs. Wilson sold the property did this cleaning up occur that you have just described, for how long a period of time?

A. It would be a matter of a month, I guess, or something like that.

(Testimony of Verginio Curti.)

Q. After a period of a month did anybody move into the house?

A. They moved in, yes; later on, yes, they moved in. [333]

Q. Who moved in?

A. Mr. Fong and Mrs. Fong.

Q. Can you point out Mrs. Fong in the courtroom? A. Oh, yes, I see her.

Q. Sitting in the front row of spectators?

A. Yes.

Mr. Schnake: The record may show that the defendant Chin Bick Wah has been identified.

Q. (By Mr. Schnake): Now, did you, after Mr. and Mrs. Fong moved in, how often did you see them at the house there?

A. Oh, off and on every few days, sometimes every day and sometimes maybe not every day.

Q. Were you working at the time?

A. No, I was home.

Q. How long have you been retired, by the way Mr. Curti? A. Since 1937.

Q. You're a retired postal carrier?

A. That's right.

Q. Were you around the house every day during that period of time?

A. Well, I wouldn't say every day, no; most of the time.

Q. Now, what time of the day would you say you saw Mr. and Mrs. Fong, if you can relate?

A. Well, most of the time I saw Mr. Fong when he went to work in the morning, because he went

(Testimony of Verginio Curti.)

around ten o'clock or so, [334] and that's about the only time I saw him.

Q. When you saw him did you ever see Mrs. Fong with him?

A. Well sometimes I'd see her go with him.

Q. They would come out of the house together?

A. Go to work, yes.

Q. Did you ever see them in the evening?

A. Well, I didn't see much of them in the evening for the simple reason that they came home late, and I would never see them in the evening.

Q. Now, shortly after they moved into this property did you have occasion to talk with Mr. Fong?

A. Yes, Mr. Fong introduced himself, we shook hands.

Q. He introduced himself? Where did that take place? A. In the back yard over the fence.

Q. Can you say approximately how many weeks that was?

A. I couldn't specify the time, no. I couldn't say. It was shortly after they moved in.

Q. You mean by that less than two months?

A. Oh, yes.

Q. What did he say when he introduced himself?

A. Well, he said, "My name is William Fong," that's all, and we shook hands, and that's it.

Q. Now, at this time when you first met Mr. Fong, how, if at all, did he refer to the other woman that was there?

A. Well, I don't know that he referred to her specifically [335] around that time, but any time I

(Testimony of Verginio Curti.)

ever heard him mention her he said, called her his wife.

Q. Now, approximately two or three months after the Fongs moved into this property, do you recall the particular occasion of a housewarming party?

A. I recall a party, but I couldn't place the time; can't recall the time.

Q. Do you have any recollection when it was in relation to the time they moved in?

A. It was after, of course, but I couldn't say just how long after. I forget that part. [336]

Q. Could have been two or three or four months?

A. Something like that.

Q. Could it have been any more than that?

A. Possibly could be. I don't think so, though; I think it is within three or four months at the most.

Q. How long did the Fongs continue to live there?

A. Well, they lived there until they sold the place, a little before they sold to the State, which was, I would say, about a year ago, or less.

Mr. Schnake: Thank you. That's all.

Mr. Davis: I have no questions.

Mr. Burns: No questions.

The Court: That is all. Thank you very much. Step down.

(Witness excused.)

Mr. Schnake: At this time we will offer in evidence, your Honor, the copy of the certificate of mar-

riage of William Fong, which I have previously exhibited to counsel.

Mr. Burns: We will stipulate that the document counsel refers to may be introduced in evidence.

Mr. Davis: So stipulated.

Mr. Schnake: All right. The Government will offer the certificate of marriage of William Y. Fong and Bick Wah Chin, of October 1, 1953.

The Court: May be marked Exhibit No. 21.

(Thereupon, the certificate of marriage above referred to was received in evidence as Plaintiff's Exhibit No. 21.) [337]

Mr. Schnake: The Government will also offer at this time the certified copy of a deed from William W. Fong, a single man, to Faye Y. Chin, a single woman, executed February 25, 1953, and recorded March 18, 1953, relating to the same real property as described in Government's Exhibit 20.

Mr. Burns: On behalf of Defendant Levy, may the record show an objection to that last offer?

The Court: The objection may be overruled; may be marked Exhibit 22.

(Thereupon, the copy of deed described above was marked Plaintiff's Exhibit 22 and received in evidence.)

The Court: Mr. Schnake, you have another witness here available?

Mr. Schnake: Mrs. Curti is right here in the courtroom.

The Court: All right. Put the witness on and do that later.

Mr. Schnake: Very well. Mrs. Curti, will you take the stand, please?

ROSE D. CURTI

called as a witness on behalf of the Government. Sworn.

Direct Examination

By Mr. Schnake:

This will be substantially the same testimony as the previous witness, your Honor.

Q. Mrs. Curti, would you state your full name, please? A. Rose D. Curti. [338]

Q. Are you the wife of Mr. V. Curti who just appeared here? A. Yes.

Q. Do you reside at 592 MacArthur Boulevard?

A. I do.

Q. Do you recall the fact that Mrs. Wilson, your next door neighbor, sold her property in about 1952?

A. Well, I am not sure about the dates, but I know Mrs. Wilson sold her property.

Q. And you remembered having knowledge of the fact at the time that she had done so, is that correct?

A. Yes.

The Court: Counsel, subject to your objection as to materiality, are you willing to stipulate that if the same questions were asked this witness as the questions asked the previous witness, that she would testify the same as the previous witness?

Mr. Davis: Gladly, your Honor.

Mr. Burns: Yes, your Honor, subject——

The Court: Subject to your objection as to materiality, and the objection may be overruled.

(Testimony of Rose D. Curti.)

The stipulation is that if the same questions were asked this witness that were asked the previous witness, that her answers would be substantially the same as that given by the previous witness.

Mr. Schnake: We have no further questions of this witness. [339]

The Court: Thank you very much, Mrs. Curti. You may step down.

We will take a recess at this time until 1:45 this afternoon. You may now retire.

(Whereupon, an adjournment was taken until the hour of 1:45 o'clock p.m. this date.) [340]

Afternoon Session—1:45 P.M.

The Court: The jurors are present. Proceed.

Mr. Schnake: At this time, your Honor, we will offer in evidence a deed from Raye Y. Chin, a single woman, to William W. Fong, a single man, executed——

The Court: Dated?

Mr. Schnake: Dated August 3, 1953, and recorded August 21, 1953, in Alameda County, and referring to the same real property described in Government's Exhibit 20.

Mr. Burns: On behalf of the Defendant Levy, we will make our same objection.

The Court: The objection may be overruled. Mark it Exhibit 23.

(Thereupon, the foregoing document was marked Plaintiff's Exhibit No. 23 and received in evidence.)

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II

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No. 15268

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United States
Court of Appeals
for the Ninth Circuit

CHIN BICK WAH,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Two Volumes

Volume II
(Pages 325 to 627)

Appeal from the United States District Court for the Northern District of California, Southern Division.

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Appeal from the United States District Court for the Northern District of California.
Southern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—11-16-56

Mr. Schnake: The Government will offer in evidence a certified copy of a deed from William W. Fong, a single man, to Chin Bick Wah, a single woman, dated September 22, 1953, and recorded September 23, 1953, in Alameda County, and conveying the same real property described in Government's Exhibit 20.

The Court: It may be admitted and marked Exhibit 24.

(Thereupon, the foregoing document was marked Plaintiff's Exhibit No. 24 and received in evidence.) [341]

Mr. Schnake: The Government will call next Gee King Yip, and this witness will require the services of an interpreter. We have discussed with counsel the use of Mr. Harry Hong, Immigration Interpreter——

Mr. Davis: Agreeable.

Mr. Schnake: Is that agreeable to the defendants?

Mr. Burns: That is correct.

The Court: Swear the interpreter.

(Thereupon, the interpreter, Harry Hong, was duly sworn, and in turn swore in the witness, Gee King Yip.)

GEE KING YIP

called as a witness on behalf of the Government; Sworn by the interpreter.

Direct Examination

By Mr. Schnake:

Mr. Hong, when you speak in English will you speak very loud so that the entire jury can hear you?

The Interpreter: I will try.

Mr. Schnake: And just translate what the witness says without any colloquy between interpreter and witness.

Q. What is your name? A. Gee King Yip.

Q. Is that spelled G-e-e K-i-n-g Y-i-p?

Mr. Schnake: Would you translate that, ask her if that is the spelling? A. Yes. [342]

Q. Where do you live? A. In Colma.

Q. At 531 C Street? A. Yes.

Q. Are you the former wife of Fong Wy Sum?

A. Yes.

Q. Would you point him out in the courtroom?

A. (Indicating.)

Mr. Schnake: May the record show she is indicating the defendant Fong Wy Sum.

Q. When did you marry Fong Wy Sum?

A. 1924.

Mr. Schnake: I don't know whether the Jury can hear all of your remarks, Mr. Hong. Perhaps we can move the microphone closer to the interpreter. A. 1924.

(Testimony of Gee King Yip.)

Q. Where did you marry him?

A. In China, in Oung Me Village, Chung Kuen Section.

The Court: Mr. Interpreter, you have to speak louder, please. Now, the Jury has to hear you; your head is turned away from them, and they can't hear you.

Q. (By Mr. Schnake): In what year did William Fong—Did William Fong bring you to the United States? A. Yes.

Q. In what year? [343] A. 1932.

Q. Now, do you recall in 1949 when you broke your leg? A. Yes.

Q. When did that occur in 1949?

A. January the 1st.

Q. How long were you in the hospital, if at all?

A. Almost four months.

Q. During the time that you were in the hospital do you recall having a conversation with Fong Wy Sum in which a picture was exhibited to you?

A. Yes.

Q. Where did that conversation take place, in your hospital room? A. Yes.

Q. Was anyone else present? A. No.

Q. What picture was exhibited to you?

A. A woman's picture.

Q. Who was the woman in that picture?

A. Chin Bick Wah.

Q. Would you point that person out in the courtroom? A. (Witness indicating.)

(Testimony of Gee King Yip.)

Mr. Schnake: Indicating the defendant Chin Bick Wah.

Q. Now, was there any conversation at the time he showed that picture to you? [344]

A. He said——

Mr. Burns: Pardon me. If your Honor please, I am going to object to the witness relating any conversation against the Defendant Levy on January 1, 1949, or some time thereabouts. The allegations in the indictment commence in 1950.

Mr. Schnake: Your Honor, the indictment alleges that the relationship between the defendants Chin Bick Wah and Fong, out of which the conspiracy grew in 1950, started in 1948 and 1949, and that therefore the acts and the declarations of this conspirator would show the conditions that existed at the time of the creation of the conspiracy, and in fact the causes of the conspiracy coming into being are admissible against all three of the defendants. Since this is a conspiracy, it must have objects and the objects of the conspiracy may arise prior to the actual formation of the agreement which constitutes the conspiracy.

Mr. Burns: Well, I am not going to make a long speech to the effect that Mr. Schnake does, but the basic principle is that the conspiracy is delineated by the terms of the indictment and alleges commencing on or about January 1, 1950, there was a conspiracy between the alleged conspirators named as defendants.

(Testimony of Gee King Yip.)

The Court: I am inclined to think the testimony is not admissible against the Defendant Levy.

Mr. Davis: I make the same objection, your Honor, the [345] indictment starts in 1950 as far as our clients are concerned.

The Court: Is that your only objection, Mr. Davis?

Mr. Davis: Also, your Honor, that at that time this alleged conversation took place, they were husband and wife, and marital privilege existed.

Mr. Schnake: Your Honor, on that point, there has been testimony from two witnesses as to the Defendant Fong's expressing exactly the testimony that this witness——

The Court: I have received no authority that that makes it admissible, Mr. Schnake.

Mr. Davis: Furthermore, your Honor, they were alone in this conversation, couldn't have been any witnesses to it.

The Court: I repeat, I made the statement that I have received no authority that this is admissible under those circumstances, Mr. Schnake. I asked for it days ago.

Mr. Schnake: Your Honor, the case of Ferreira versus the United States as to the effect——

The Court: Counsel, I asked for these cases a couple of days ago.

Mr. Schnake: Your Honor, it is my impression they were given to you three days ago.

The Court: I have not seen them. My law clerk

(Testimony of Gee King Yip.)

tells me he hasn't gotten them, and I have to go on that statement.

Mr. Schnake: Your Honor, Mr. Morganstein gave these authorities to the law clerk a few days ago in an oral discussion [346] with Mr. Davis.

The Court: The only authorities I am told that have been received that such statements may be admitted if other persons were present at the time of the communication between husband and wife. If you have some additional authorities, I will have to see them. This conversation shows there was no other person present.

Mr. Schnake: That is correct.

Mr. Davis: Mr. Schnake must be mistaken. I had no discussion with your law clerk. That is the first time I have heard of it.

Mr. Schnake: Your Honor, the specific question of the authorities on it, the authorities that we had submitted, as your Honor states, related to persons being present at the conversation, and the rationale of those decisions and the Supreme Court decision which sets forth limitations of the husband and wife privilege, marital communication privilege, speaks of the idea that it must be confidential, a confidential communication. It is the position of the Government that any confidential nature of the communications, one, must be apparent at the time that it is a confidential communication and not just any communication, and secondly, that there was a complete waiver of any confidential nature of the communications by

his revelation of the fact he had made those statements to the wife and to other witnesses—— [347]

The Court: You contend that my statement isn't true that you have not given me any authority that justifies and sets out that a statement made of this kind is admissible?

Mr. Schnake: Your Honor, it isn't a question of stating your Honor's remark is not true, but a disagreement on the legal effect, perhaps.

The Court: The authority you gave me, as I understand it, was that such a statement was admissible when other persons were present, in a conversation between husband and wife, isn't that right?

Mr. Schnake: That is one of the authorities.

The Court: That is the only authority you have given me.

Mr. Schnake: The other authority is the Ferrera case which holds that in order for the communication to be privileged it must be a confidential communication and until the statement is offered, there can be no determination of whether it is of a confidential nature.

And secondly, we have already given evidence, your Honor, showing it was not confidential, because of a revelation of the very facts themselves and the fact of saying it to the wife and to other witnesses.

Mr. Davis: The point is, your Honor, the rule is the wife can't testify against her husband.

The Court: That's a different rule, Mr. Davis.

If you desire to take a short recess, I will [348]

discuss this with counsel in chambers. The Jury may take a recess and we will let you know when to come back.

(Short recess.)

The Court: The Jury is present. Read the question.

(The reporter read the question as follows: "Q. Now, was there any conversation at the time he showed that picture to you"?)

The Court: You may answer yes or no.

Read the question again, and Mr. Interpreter, you interpret the question to the witness.

(Record read.)

Q. (By Mr. Schnake): Answer yes or no.

A. Yes.

Q. What was that conversation?

Mr. Davis: I object, your Honor, on the grounds this is a confidential marital communication.

Mr. Burns: I will make the objection on behalf of the Defendant Levy that I heretofore made, if your Honor please, that is outside the scope of the indictment.

The Court: The objection may be sustained.

Mr. Schnake: All right.

Q. Now, a few months after you left the hospital, did you discover a letter at your home? A. Yes.

Q. Where did you find that letter? [349]

A. When I washed his clothes, I found it in his pocket.

Q. In whose clothes? A. Fong Wy Sum's.

(Testimony of Gee King Yip.)

Q. Was the letter open or sealed when you found it? A. It was opened.

Q. Who was the letter from?

A. Chin Bick Wah.

Q. What did it say?

Mr. Burns: On behalf of Defendant Levy, if your Honor please, I didn't want to object to this interesting episode, but certainly the acts and declarations of this witness would be hearsay as to the Defendant Levy in this matter and on that basis I move to strike the testimony so far as he is concerned as to her actions outside his presence and likewise as to the contents of this letter.

Mr. Schnake: Your Honor, we would urge it would be admissible against Mr. Levy as well as against Fong and Chin Bick Wah as showing the relationship between the two parties which was actually the thing that caused the prime object of the conspiracy to come into being. It is set forth in the indictment that this exchange of correspondence between Chin Bick Wah and Fong had occurred and that was one of the circumstances out of which the conspiracy arose.

The Court: Just a moment. I want to ask a question. In what year was it that you found this [350] letter?

The Witness: 1949.

The Court: The objection may be sustained as to Defendant Levy.

Mr. Burns: Thank you.

The Court: Not admitted as to Defendant Levy.

(Testimony of Gee King Yip.)

Q. (By Mr. Schnake): What did this letter say?

A. Asked him to send some money, send some clothes, send some shoes, send some stockings and make arrangements for her to come to the United States.

Q. Did you have an argument with your husband about this letter? A. Yes.

Q. About how long after you found the letter?

A. After I found that letter, when I see him, we had an argument.

Q. You mean the next time you saw him?

A. He was always home, but when I saw him, I argued.

Mr. Davis: I didn't hear that.

The Court: I didn't hear you.

Read it, Mr. Reporter.

The Interpreter: He was always home——

The Court: No, the reporter will read it.

(Record read by the reporter.)

Q. (By Mr. Schnake): Well, was it shortly after you found the letter that you had this argument with him? [351] A. Yes.

Q. Did you show him the letter?

A. No, I torn it.

Q. You what?

A. I was mad and I tear it up.

The Court: I don't understand it.

Mr. Schnake: "I was mad and tore it up," is what I understood.

(Testimony of Gee King Yip.)

The Court: Read it, Mr. Reporter.

(Record read by the reporter.)

Mr. Burns: I assume, your Honor, that just as the letter, the details of this argument are not going in against us?

The Court: That's right.

Q. (By Mr. Schnake): After you had this argument, did your husband get a post office box?

A. Yes.

Q. Did you see any mail of your husband's come to the house after that time?

A. No, it all went to the post office box.

Q. Do you know Jonathan Yee? A. Yes.

Q. By what name do you know him, what Chinese name? A. Hall Kee.

Q. Hall Kee.

Mr. Schnake: Would you spell that, Mr. Interpreter? [352]

The Interpreter: H-a-l-l K-e-e.

Q. (By Mr. Schnake): For how long have you known him? A. A long time.

Q. Have you seen him in the presence of Fong Yee Shee, William Fong's mother?

A. Yes, he was always here.

Q. You mean at your house or at the store?

A. I saw him at the store and also at home.

Q. By what name does he refer Fong Yee Shee, William Fong's mother? A. Paternal aunt.

Q. Paternal aunt? Did you know Jonathan Yee before the war? A. Yes.

(Testimony of Gee King Yip.)

Q. Did he ever work at your husband's store that you know of?

Mr. Davis: Your Honor, may I interrupt? My client advises me that one of the answers given by the interpreter, the interpreter interpreted incorrectly.

Mr. Schnake: What was the answer?

Mr. Davis: Where she said "aunt" and not "paternal aunt."

The Court: What?

Mr. Davis: She said in reply to a question, she said "aunt," and the interpreter said "paternal aunt."

Mr. Schnake: I will ask the question over again.

Q. By what name does Jonathan Yee refer to Fong Yee Shee, William Fong's mother? [353]

A. Ah Goo.

Mr. Schnake: And how is "Ah Goo" translated, Mr. Interpreter?

The Interpreter: The father's sister.

Mr. Schnake: The father's sister?

Mr. Francis Leo indicates that that term means what the interpreter said, your Honor. I think if further testimony is offered, we can straighten it out at that time.

Q. Now, do you recall when Chin Bick Wah came to the United States? A. Yes.

Q. Did you have a conversation with her a few days after she arrived in the United States?

A. Yes.

(Testimony of Gee King Yip.)

A. At the store.

Q. At 935 Stockton Street? A. Yes.

Q. Who was present?

A. No one. I was there alone, but she came with someone.

Q. She came with someone? A. Yes.

Q. Was that a man or a woman?

A. A woman.

Q. Do you know the name of that person that she came with? [354] A. Ah Jung.

Mr. Schnake: Would that be spelled A-h J-u-n-g, Mr. Interpreter?

The Interpreter: Yes.

Q. (By Mr. Schnake): Can you relate what Chin Bick Wah said to you in that conversation?

Mr. Burns: Pardon me. Is the witness going to answer yes or no, because if she is going to start relating, I am going to interpose an objection.

Q. (By Mr. Schnake): Please relate what was said by Chin Bick Wah in that conversation.

Mr. Burns: I make the objection on behalf of Defendant Levy that it is incompetent, irrelevant and immaterial as to him, and hearsay as to him.

Mr. Schnake: The date of this would be March 17, 1952.

The Court: The objection may be overruled.

Mr. Burns: St. Patrick's Day is this?

Mr. Schnake: Want a stipulation?

Q. (By Mr. Schnake): Go ahead, please relate the conversation.

A. Chin Bick Wah asked me to divorce Fong Wy

(Testimony of Gee King Yip.)

Sum, otherwise she says she will not marry him.

Mr. Schnake: Maybe the reporter better read that answer.

(Record read.)

Q. (By Mr. Schnake): Was there anything said in this conversation about moving into anyone's home? [355]

A. No, she was scolding me at that time. She said, "Look at my hand and look at your hand."

Q. "Look at my what?

A. "Look at my hand and look at your hand. Even if you cook for me, I wouldn't like it."

Q. "Even if you cook for me, I wouldn't like it"?

The Court: Mr. Reporter, read that answer, please.

(Record read.)

Q. (By Mr. Schnake): Was there anything said in this conversation about the use of the name, Fong Shee?

A. After I divorce Fong Wy Sum I could not use the name Fong Shee.

Mr. Schnake: Are you asking the witness to repeat part of the answer?

A. (Continuing): Even my daughter have to be away from the Fong family.

The Court: Mr. Interpreter, we can't hear you. We have talked to you several times about it, and we can't hear you. I don't want to ask the reporter to read every question.

(Testimony of Gee King Yip.)

Read it, Mr. Reporter.

(Record read.)

The Court: Who said that?

The Witness: (Pointing.)

Mr. Schnake: Let the record show she is pointing to the defendant Chin Bick Wah. [356]

The Court: Without the use of the Interpreter.

Mr. Schnake: Without the use of the Interpreter.

Q. Mrs. Gee King Yip, do you understand a few words in English? A. A little.

Q. All right. You understand English well enough to testify without an Interpreter?

A. No.

Q. Now, how long did this conversation with Chin Bick Wah take?

A. That is all we said. After I finish cooking I told her to go away.

Q. How long before your divorce from William Fong did you and William Fong stop living together?

A. I move away September 8 and on October 24 we sign a paper.

The Court: What year?

The Witness: In '52.

Mr. Schnake: That's all.

Cross-Examination

By Mr. Davis:

Q. Can you understand me? A. No.

(Testimony of Gee King Yip.)

Q. You were married to Mr. Fong in China, is that correct? A. Yes.

Q. In 1924? [357] A. Yes.

Q. And your husband left China in 1925 and came here, didn't he?

A. He—in American reckoning probably twenty-five, but he left in the latter part of the year, that was probably the Chinese reckoning.

The Court: Did the jury get that?

Read it, Mr. Reporter.

(Record read by the Reporter.)

Q. (By Mr. Davis): Then he left in the latter part of the year that you were married?

A. In Chinese reckoning it is the latter part of the year, but in American reckoning it would be the next year.

Q. What month in the year 1924 were you married?

A.—The second month, tenth day, in the Chinese reckoning.

Q. Second month of the year 1924?

A. Yes.

Q. What month of what year did your husband leave China?

A. Twelfth month in the Chinese reckoning, but I don't know what month that would be in the American reckoning.

Q. So from the date of your marriage till the time your husband left was ten months?

A. Yes.

Q. And you remained in China?

(Testimony of Gee King Yip.)

A. Yes. [358]

Q. Did your husband come back to China again in 1929? A. Yes.

Q. Then did he send for you?

A. After he came back, after about three years after he came back then I came.

Q. Did your husband send for you?

A. Yes.

Q. You came with your daughter?

A. Yes.

Q. It's a daughter of you and Mr. Fong?

A. Yes.

Q. Was that in the year 1932? A. Yes.

Q. Then isn't it a fact that about a month after you got here you and your husband separated?

A. A little more than two months, then he left.

Q. Then he came back in 1942, is that correct?

A. Yes.

Q. Now, from the time your husband came back in 1942 up until the time he got a divorce, you didn't get along together, did you?

A. I don't know how you consider get along, but every morning I went with him to the store and worked.

Q. Didn't you have——

A. (Interrupting): And he lived at home every day. I don't [359] know how you consider getting along.

Q. Isn't it fact that you had lots of fights and arguments during that time?

A. No. No argument or no fighting.

Mr. Davis: I have no further questions, your Honor.

Mr. Burns: No questions.

Mr. Schnake: No questions.

(Witness excused.)

BENTON FONG

a witness called by the Government. Sworn.

Direct Examination

By Mr. Schnake:

Q. Please state your name.

A. Benton Fong.

Q. Where do you live, Mr. Fong?

A. 1251 Jackson.

Q. Speak very loud so all the members of the jury can hear you. A. 1251 Jackson Street.

Q. By what other name are you known?

A. Fong Kim Kuon.

Q. Are you related to the defendant, Fong Wy Sum? A. Yes, he is my brother.

Q. How old are you, Mr. Fong?

A. Thirty-four. [360]

Q. Do you know Jonathan K. Yee?

A. Yes; I do.

Q. By what name do you know him, what Chinese name? A. Yee Hall Kee.

Q. What relationship is he to you?

A. My Cousin.

Q. What relationship is he to your mother, Fong Yee Shee?

(Testimony of Benton Fong.)

A. Supposed to be my mother's nephew.

Q. Is he the son of your mother's brother or sister?

A. I wouldn't know for sure. He might be my mother's brother's son.

Q. Your mother's brother's son?

A. Yes. I wouldn't know for sure, though.

Q. Now, how long have you known Jonathan Yee?

A. Ever since he came over from China.

Q. Was that before or after the war?

A. That was before the war.

Q. Did you go in the armed forces yourself, Mr. Fong? A. Yes, sir.

Q. During the time that you were in the Armed Forces did you send a picture to Jonathan Yee?

A. I forgot that I sent him a picture, but the investigator did show me a picture.

Q. They showed you a picture?

A. That is right. [361]

Q. I will now show you a photograph and ask you if you recognize the person in that picture?

A. That's myself.

Q. Whose handwriting is that on the photograph? A. That is my own handwriting.

Q. Did you write the words, "To Cousin Johnnie"?

Mr. Burns: Pardon me, your Honor, I am going to object to his habit of reading from some document that is not in evidence.

(Testimony of Benton Fong.)

Mr. Schnake: I asked if he wrote certain words on there, your Honor.

All right, I will withdraw the question, and offer it in evidence at this time.

Mr. Burns: On behalf of defendant Levy, I would ask it not be admitted as against him and ask your Honor to examine it for the purpose of my objection; makes it even more remote.

Mr. Schnake: That corroborates, your Honor, the relationship which exists up to this present moment; that relationship is one of the issues in this case.

The Court: The objection may be overruled.

Mr. Schnake: That has been offered in evidence.

The Court: All right, Exhibit No. 25.

(Thereupon, the foregoing photograph of the witness and signed by him was introduced and marked in evidence as Government's Exhibit No. 25.)

Q. (By Mr. Schnake): Did you write the words, "To Cousin [362] Johnnie" in the upper left-hand corner? A. Yes; I did.

Q. And the words "Your Cousin, Benny"?

A. Yes.

Q. "3-4-43" in the lower right-hand corner?

A. Yes; I did.

Q. Thank you. Do you recall, Mr. Fong, the occasion when Chin Bick Wah came to the United States?

A. Will you please repeat that again?

(Testimony of Benton Fong.)

Q. If my question is not clear—do you recall the fact that she came, not the particular date?

A. Well, yes; after she came; yes.

Q. You knew she was here; is that right?

A. Yes.

Q. Now, shortly after she came to the United States did you have a conversation with your brother, William Fong, regarding Chin Bick Wah?

A. No; I didn't.

Q. Shortly after Chin Bick Wah came to the United States did you have a conversation with your brother, William Fong, regarding a divorce from Gee King Yip?

A. I may have, but I couldn't recall for sure whether I did or not now.

Q. Approximately how long after Chin Bick Wah came to this country did you have such a conversation, if any? [363]

A. I couldn't remember for sure, now.

Q. Was it prior to the time he divorced Gee King Yip?

A. That I couldn't remember for sure, either.

Q. Did you at any time since Chin Bick Wah came to this country have a conversation with your brother about either Chin Bick Wah or a divorce from his wife Gee King Yip?

A. I couldn't tell you for sure whether I did or not, it has been such a long time.

Mr. Davis: You intend to show something to the witness?

Mr. Schnake: Yes; I am going to show the wit-

(Testimony of Benton Fong.)

ness certain Grand Jury testimony for the purpose of refreshing his recollection.

Mr. Burns: Could we see it first?

Mr. Davis: Could we see it first, please?

Mr. Schnake: All right. I am showing counsel the Grand Jury transcript, page 56, starting with line 5 and running over to line 4 of page 57—correction, running over through line 10 of page 57.

Q. (By Mr. Schnake): I am showing you, Mr. Fong, a transcript of Grand Jury testimony starting with page 56, line 4, running through page 57, line 10, and ask you if that refreshes your recollection as to whether or not you had a conversation with your brother William Fong at any time after Gee King Yip—correction, Chin Bick Wah came to the United States regarding either Chin Bick Wah or a divorce from Gee King Yip? You [364] may read it over.

Does that refresh your recollection as to whether you had such conversation?

A. Yes; now it did.

Q. Did you have such a conversation with your brother? A. I believe I did.

Q. Where did that conversation take place?

A. Well, at the—the transcript said probably at the store.

Q. At 935 Stockton Street?

A. That's right.

Q. Who else was present, if anyone else?

A. Nobody else.

(Testimony of Benton Fong.)

Q. Was this after Gee King Yip came to the country, this conversation.

The Court: After who?

Mr. Schnake: Excuse me.

Q. Chin Bick Wah—after Chin Bick Wah came to the United States?

A. Must have been; yes.

Q. Was it before the divorce of your brother from Gee King Yip?

A. I wouldn't know when they had a divorce.

Q. Was it shortly after Chin Bick Wah came to this country?

A. I couldn't say for sure, you know, the exact time it would be. [365]

Q. What if anything did you say to your brother about that subject, about either Chin Bick Wah or a divorce from Gee King Yip?

Mr. Burns: On behalf of the defendant Levy I make the same objection.

The Court: Overruled.

The Witness: Will you please repeat the question?

The Court: Read it.

(Question read by the Reporter.)

A. Well like that, what I said in the Grand Jury hearing, I told my brother that he shouldn't, you know, get a divorce and he should just have one, you know, have the first wife, and it would be a lot of trouble.

(Testimony of Benton Fong.)

Q. (By Mr. Schnake): Had you met Chin Bick Wah when this conversation took place?

A. No.

The Court: Are you attempting to elicit a reply from the defendant Fong to that statement?

Mr. Schnake: Yes, whether he himself had met Chin Bick Wah.

The Court: You asked what this witness said to Fong and I permitted it, wasn't any objection, but I expected there would be a reply from Fong; otherwise it wouldn't be admissible.

Q. (By Mr. Schnake): What did Mr. Fong say in reply to your statement? [366]

A. Well he didn't give me any, you know, reply at that time. I was just speaking out loud to him myself. As a matter of fact, I had no right to tell him what to do.

Mr. Burns: We will move on behalf of defendant Levy that the response of this witness go out because it is certainly not a declaration of a conspirator under the guise of a statement of this witness in the absence of Mr. Levy, it is hearsay to him.

Mr. Davis: I make the objection on behalf of my clients that if Mr. Fong didn't reply to this there isn't a conversation that can be admitted, merely a statement he made in his presence.

The Court: The reply of the defendant was he said nothing, as I gather from the witness. I will permit the answer.

Mr. Burns: But if your Honor please, there is

(Testimony of Benton Fong.)

nothing to connect Mr. Levy with this. This is Mr. Benton Fong testifying as to what he said at some meeting between he and his brother in which his brother said nothing.

The Court: The objection may be overruled.

Q. (By Mr. Schnake): Mr. Fong, have you talked with your brother William Fong about Chin Bick Wah at any time since she came to this country?

A. No. Even after she came to this country? No.

Q. Yes. A. No. [367]

Q. Mr. Fong, I will show you Government's Exhibit No. 6, the first document therein, petition for immigration visa, and ask you if that is your signature on the portion entitled "Affidavits of Witnesses"? A. Yes, that is my signature.

Q. Did you sign that yourself?

A. That's right.

Q. Under what circumstances did you sign that?

A. Well, he just told me to sign this paper and I just signed it.

Q. Who told you to sign it?

A. My brother.

Q. Your brother who? A. William Fong.

Q. Where did he make that statement?

A. Pardon?

Q. Where did he make that statement, where were you?

A. At the time we were at the store.

Q. Was that approximately December 10, 1951, at the time indicated on the paper?

(Testimony of Benton Fong.)

A. Why, I wouldn't know what date it was. At that time I was working at the store.

Q. Was that before or after Jonathan Yee went to Hong Kong, if you know?

A. That might have been before, but I wouldn't know for sure. [368]

Q. Was anyone else present when William Fong made that statement? A. No.

Q. Did you read over the statements in this petition before you signed? A. No, I didn't.

Q. At the time you signed it was this document entirely filled in, if you recall?

A. I couldn't remember for sure, but it might have been filled in and it might not have been, but all I did was sign my name on it.

Q. You just signed the paper?

A. That's right, I didn't bother to read it over.

Q. At the time you signed that paper, Mr. Fong, did you have knowledge as to the name of Jonathan Yee's father? A. No, I don't.

Q. You know Yee Hing Bow?

A. I don't know him.

Q. Were you under the belief at the time you signed that paper that Jonathan Yee's father was in the United States residing at 1006 Bush Street, San Francisco?

A. Why, I wouldn't even know, I don't have any knowledge whether he was over here or back in China. And besides at that time, you know, I was—we never have a private conversation, you

(Testimony of Benton Fong.)

have any business wanting to know anything [369] like that, see.

Q. You wouldn't have any knowledge as to the whereabouts of your uncle, the father of Jonathan Yee? A. Yes, sir.

Q. Is that correct? When you signed this paper, the Government's Exhibit 6, the affidavit of witness, had you read the portion that states that the statements made in the foregoing petition are true and correct to the best of your knowledge and belief? A. I guess I didn't then.

Mr. Schnake: That's all.

Q. One last question, Mr. Fong. Did you appear here voluntarily or were you subpoenaed to appear?

A. I was subpoenaed to appear.

Mr. Schnake: That's all.

Cross-Examination

By Mr. Burns:

Q. Mr. Fong, you say you know Jonathan Yee, is that correct? A. That's right.

Q. Did you know his former wife, Jean Yee?

A. After they got married.

Q. Do you recall when it was they got married?

A. No, it's probably right after he came out of the service.

Q. How many children have they? [370]

A. Now?

Q. Yes.

A. The last time I know they have a boy and a girl.

(Testimony of Benton Fong.)

Q. Directing your attention to the year 1951, did you see Mr. Jonathan Yee and his wife, Jean Yee, on frequent occasions?

A. Well, sometimes I go to their place when they were living over on Powell Street.

Q. You're aware of the facts, are you not, that Mr. Jonathan Yee secured a divorce at Reno, Nevada, in May of 1951, is that correct?

A. I couldn't remember for sure.

Q. That is, you can't remember the date, is that right? A. That's right.

Q. Directing your attention to the early part of 1951, did you have occasion to see Mr. and Mrs. Yee at certain times?

A. Well, lots of times we go over for dinner and sometimes we just go over, you know, to drop in and see them for a few minutes.

Q. Do you know a young lady in Chinatown by the name of Lucille Lum?

Mr. Schnake: If your Honor please, I will object to this as being outside the scope of the direct examination.

The Court: It may be preliminary, I don't know what it is.

Mr. Burns: Well, Mr. Schnake asked him if he knows— [371] if he knew Jonathan Yee and I want to find out how well he knows him.

The Court: I will permit him to answer.

A. Yes, I do.

Q. (By Mr. Burns): Now, it is a fact, is it not, Mr. Fong, that you had occasion to accompany the

(Testimony of Benton Fong.)

wife of Jonathan Yee in an automobile to await the arrival of Mr. Jonathan Yee at the apartment of Lucille Lum in Chinatown, did you not?

Mr. Schnake: I will object to that, your Honor, as outside the scope of the direct examination.

The Court: What is the purpose of it?

Mr. Burns: To show how well he knows Mr. Jonathan Yee. And I might point out to your Honor that subparagraph A of paragraph 6 of the indictment appearing on page 5 alleges that this alleged conspiracy was accomplished through the fact that Jonathan Yee was counseled and assisted by Robert L. Levy, an attorney, to secure a sham divorce, and I think that it is incumbent upon us, as it seems to be, to show the falsity of that allegation by showing that this was no sham divorce.

The Court: I will permit the answer.

Mr. Schnake: Your Honor, I will object on the further grounds that when he says accompanied the wife of Jonathan Yee he is not making any designation——

Mr. Burns: Well, Jean Yee, who hasn't been produced here yet. [372]

Q. (By Mr. Burns) You understand my question, Mr. Fong? A. Yes, I did.

Q. You did accompany her? A. Yes.

Q. Did you see Jonathan Yee on that occasion?

A. Well, earlier that night they had a fight.

Q. When you say they had a fight, who had a fight?

A. Jonathan Yee and Jean Yee, his wife.

(Testimony of Benton Fong.)

Mr. Schnake: I object to that as not responsive to the question, your Honor. On the further grounds it is remote and has nothing to do with the issues of this case.

The Court: I think it is responsive, who had a fight.

Mr. Schnake: The question was did he accompany her and he made some statement about earlier they had a fight.

Mr. Burns: He said they had a fight and I asked who had a fight.

The Court: Go ahead.

A. (Continuing): And the wife came over and wanted me to take her down to where that Lucille Lum was living. At that time she was living at 950 Clay Street. And I parked the car across the street and in the alley there and I didn't want her to get hurt, you know, in case Jonathan do come back with Lucille and find she is traiiing him, then he might do something bad to her, so——

Mr. Schnake: I object to that, your Honor, and move to [373] strike it out as an opinion and conclusion.

The Court: It may go out. I am inclined to think on direct examination this might be admissible as part of your witness, if you desire to call her.

Mr. Burns: Well, I think under the question "Did you know Jonathan Yee"——

The Court: That has been answered.

Mr. Burns: I want to find out the extent of his

(Testimony of Benton Fong.)

knowledge of the character and propensities of Jonathan Yee in support of the Government's allegation that this was a sham divorce.

Mr. Schnake: I will stipulate he knows——

The Court: I will take care of it, Mr. Schnake. You don't have to argue. I think you are going far afield on your cross-examination.

Q. (By Mr. Burns): Mr. Fong, you did accompany Mrs. Jean Yee in pursuit of her husband, Jonathan Yee, on this night in question, is that right?

Mr. Schnake: I object. Your Honor, that has just been ruled upon, that it was going far afield.

The Court: He has already testified to that.

Q. (By Mr. Burns): Can you tell us, Mr. Fong, without going into details, was there an argument between Jonathan Yee and his wife in your presence when they met on that occasion?

The Court: I think this is not proper cross-examination, [374] counsel. You may call him as your witness at any time you so desire.

Mr. Burns: He is under the government subpoena at this time, your Honor.

Q. Now, you had visited in the Yee home from time to time, had you not? A. Yes, I have.

Q. You have known Mr. Yee for a long period of time?

A. Well, we worked together at the store there.

Q. You have also known his wife?

A That's right.

Q. For a long period of time, is that correct?

(Testimony of Benton Fong.)

A. That is after they got married.

Q. You were aware of the fact that they did get a divorce in 1951, were you not?

A. I wouldn't know what the exact date they got the divorce.

Mr. Burns: That's all.

Mr. Davis: I have no questions.

Mr. Schnake: No questions.

The Court: Take a recess at this time.

(Short recess.)

The Court: The jury is present. Proceed.

Mr. Schnake: The Government will call Jean Yee. [375]

JEAN JOW YEE

a witness called by the Government; sworn.

Direct Examination

By Mr. Schnake:

Q. Mrs. Yee, will you speak very loud and speak directly into the microphone and I believe the jury will hear you then. All right? A. Yes.

Q. Will you please state your full name?

A. Jean Jow Yee.

Q. You will have to speak very loud and speak close to the microphone. A. Jean Jow Yee.

Q. Where do you live, Mrs. Yee?

A. 218 Hale Street, San Francisco.

Q. Are you the wife of Jonathan Yee?

A. Yes.

(Testimony of Jean Jow Yee.)

Q. When did you marry him?

A. The first time?

Q. Yes. A. 1947.

Q. Do you know Fong Wy Sum? A. Yes.

Q. Would you point him out in the courtroom?

A. Right there on the table. [376]

Q. At the counsel table, indicating the defendant Fong Wy Sum. By what over name do you know him?

A. William W. Fong, also known as Bill Fong.

Q. All right. Do you know Chin Bick Wah?

A. Yes.

Q. Would you point her out in the courtroom?

A. Slightly in back of Francis Leo.

Q. By what other names is she known?

A. Helen, Helen Chan, I guess.

Q. Helen Chan. Is she also known as Helen Fong? A. Yes.

Q. By what other first name is she known besides Helen, any other American first name?

A. Not American, I believe Chinese.

Q. What's that? A. I believe it is Faye.

Q. Faye? A. Yes.

Q. How long a period have you known William Fong, Fong Wy Sum?

A. Since about 1946.

Q. Calling your particular attention to the year 1949, can you tell me where you were living at that time?

A. 1544 Powell Street, San Francisco.

Q. With whom? [377] A. Jonathan Yee.

(Testimony of Jean Jow Yee.)

Q. Were you working at that time?

A. Yes.

Q. Where was Jonathan Yee working at that time? A. Fong Brothers dairy.

Q. At what address?

A. 935 Stockton Street, San Francisco.

Q. Now did you ever stop at the store after work during the year 1949? A. Yes.

Q. How frequently did you do that?

A. Well, as frequent as two or three times a week.

Q. With whom would you go to the store?

A. Well, sometimes myself, because I would go right after work.

Q. And sometimes with what other person?

A. With Jonathan Yee.

Q. Do you recall when Gee King Yip broke her leg in 1949? A. Yes.

Q. When was that? A. January 1, 1949.

Q. Who is Gee King Yip?

A. That is the first Mrs. William Fong. [378]

Q. Now, at the time that Gee King Yip had broken her leg, how long did she remain in the hospital, approximately?

A. Approximately four and a half months.

Q. At the time she was in the hospital did you have a conversation with William Fong at the milk store? A. Yes.

Q. Do you recall who else was present? I will call your particular attention to a conversation regarding a photograph.

(Testimony of Jean Jow Yee.)

A. Oh, at that time I believe Jonathan was there and myself, but I am pretty sure that Mr. Levy also was there.

Q. I see. What time of day did that take place, if you recall?

A. It would be in the evening.

Q. After dinner? A. Yes.

Q. Can you relate the conversation that took place regarding the photograph?

A Yes. Mr. Fong had received in the mail a photograph and letter.

Mr. Davis: I will ask that go out——

Q. (By Mr. Schnake): Did he say that?

Mr. Davis: ——calling for the conclusion of the witness.

Q. (By Mr. Schnake): Did he say that?

A. Did he say what?

Q. That he had received a letter and photograph in the mail? [379] A. Yes.

Q. Go ahead, relate what was said by the person who said it, if you can. A. Let me think.

Q. Did you see the photograph?

A. Yes, I did.

Q. Of whom was that photograph?

A. Chin Bick Wah.

Q. At that time did you know who she was?

A. No.

Q. But you have since met her?

A. Since, yes, since met her.

Q. What if anything did he say about that photograph?

(Testimony of Jean Jow Yee.)

A. Well, he received the letter from either a friend or relative with her picture in it and it served as a letter of introduction to her so that they could carry on a mail, like a mail order romance.

Mr. Davis: I object again, your Honor, same ground.

Mr. Schnake: My question is what did he say, and what was her answer.

The Court: Yes, but is doesn't indicate anybody said that. If anybody makes a statement, Mrs. Yee, you say who said it and the substance of what was said, please, don't give your conclusions as to what happened.

The Witness: Oh, I see. [380]

Q. (By Mr. Schnake): Did Mr. Fong make that statement that you have just related?

A. I forgot what I said.

Mr. Schnake: Would you read that back, Mr. Reporter?

(Record read by the reporter.)

Q. (By Mr. Schnake): Did Mr. Fong say that?

A. Yes, he did.

Q. Can you recall anything else that was said at that time on that subject?

A. Yes, he said that since the first Mrs. Fong, Gee King Yip, was in the hospital and probably unable to carry on the duties of cooking and helping in the store, he would like someone, well someone to come over and help him out.

Q. Do you recall a conversation in 1949 around

(Testimony of Jean Jow Yee)

the time that Gee King Yip was in the hospital regarding Bill Fong having talked to Gee King Yip?

A. Yes.

Q. Can you tell us about when that conversation was other than the place as I have stated?

A. Well, I used to go see her in the hospital, is that what you mean?

Q. Was it around the time you went to see her in the hospital? A. Yes.

Q. I am talking about a conversation with Bill Fong about his having talked to Gee King Yip. Was there ever any [381] conversation at that time?

A. Yes, he mentioned——

Q. All right, he mentioned that? A. Yes.

Q. Can you tell me where that conversation took place?

A. That took place at the milk store.

Q. Who was present at that conversation, if you recall?

A. Well, vaguely I remember it was myself and him and John, and as I say, I am not positive sure about Mr. Levy.

Q. Now, around this time had you seen Mr. Levy at the milk store?

A. Oh, yes, quite frequently.

Q. How frequently did you see Mr. Levy at the milk store in 1949, the year that Gee King Yip broke her leg?

A. I would say about twice a week.

Q. All right. This conversation that you have just

(Testimony of Jean Jow Yee.)

described at which you, John and William Fong were present, and possibly Mr. Levy, can you relate what Fong said about the subject of having talked to Gee King Yip?

Mr. Burns: On behalf of Mr. Levy I am going to object to this conversation going in against him, without a proper foundation being laid as to his presence. This conversation was in 1949. This case can't be decided on possibilities.

Mr. Schnake: Your Honor, she stated her best recollection that he may have been there. [382]

The Witness: He was there quite often and maybe at one time he might have been there we did discuss it, and then the other times he wasn't present we also discussed it.

Mr. Burns: She says maybe he was there and maybe on that one occasion.

The Court: I think that objection goes to the weight of it, counsel. We have the testimony of the witness as it is, you have heard her statement.

Q. (By Mr. Schnake): Would you relate that conversation? A. Which one was that, now?

Q. Regarding having talked to Gee King Yip.

A. Yes. Mr. Fong said that he took the picture and the letter to the hospital where Gee King Yip was laid up with a broken leg and he told her of his intentions of bringing someone over to help her with her duties in the store.

Q. Was anything said at this conversation regarding what the marital relationship there might be?

(Testimony of Jean Jow Yee.)

Mr. Burns: I am going to object to the leading.

The Court: Sustained.

Q. (By Mr. Schnake): Would you relate the rest of that conversation as you can recall it?

A. I forgot where I left off. I forgot where I left off.

Mr. Schnake: Would the Reporter read the last part of it?

(Record read.)

Q. (By Mr. Schnake): What else did he say, if anything? [383]

A. Well, he also said that he would try to bring her over as a student nurse, or whatever method possible, and then he says, Mr. Fong says that Gee King Yip was quite satisfied with the idea.

Q. Was quite satisfied with the idea?

A. That was his version.

Q. All right.

Mr. Burns: I am going to move to strike that out——

Q. (By Mr. Schnake): Did he say that?

Mr. Burns: ——she is supposed to be relating a conversation, your Honor.

The Court: That is what he said?

The Witness: He said that, yes, he said that.

The Court: All right.

The Witness: Of course, her version——

Mr. Schnake: No.

Q. Mrs. Yee, you just answer the question what he said at that time. A. Excuse me.

(Testimony of Jean Jow Yee.)

Q. I am not asking about any conversations with Gee King Yip at this time.

Now, during the year of 1950, did you have any conversations with William Fong about the subject Chin Bick Wah? A. Yes, many.

Q. Where did these conversations take [384] place? A. At the milk store.

Q. Who was present at these conversations?

Mr. Burns: Pardon me——

Mr. Schnake: I am not asking what the conversations were, your Honor, asking if there were conversations that took place.

A. Yes, there were. Shall I continue?

The Court: You just answer the question.

Mr. Schnake: She wanted to know whether she could answer the question.

The Witness: Should I continue, sir?

Q. (By Mr. Schnake): Would you go ahead and answer the question, who else was present at these conversations?

A. It was usually Mr. Fong, Mr. Levy, Jonathan and myself.

Q. Now, do you recall a particular conversation in the latter part of 1950, at which Mr. Levy was present? A. Yes.

Q. And who else was present besides Mr. Levy?

A. Mr. Fong, Jonathan and myself.

Q. Where did the conversation take place, at the milk store?

A. Yes, at the milk store, and then—shall I continue?

(Testimony of Jean Jow Yee.)

Q. Yes, would you state what the conversation was?

Mr. Burns: I am going to object, your Honor, unless there is a more stable foundation for this conversation. She said there were many conversations and he said was there one the [385] latter part of 1950. As your Honor can appreciate, it is a very important subject matter to the defendant Levy and I think we are entitled to have laid a basic foundation for the entry of this conversation, if it occurred.

The Court: Attempt to lay a better foundation, counsel.

Q. (By Mr. Schnake): Can you tell us about when it was in 1950, that this particular conversation took place? How close to the end of the year, or how close to January 1st or any other date you can recall?

A. I would say about December of 1950.

Q. About December of 1950?

A. December of 1950.

Q. Would you relate what was said at that conversation on the subject of Chin Bick Wah, if anything?

A. Well, Mr. Fong was so anxious to have——

The Court: That may go out.

Mr. Schnake: Yes.

Q. Just answer what you can recall Mr. Fong said.

A. Mr. Fong said that he wanted very much to bring Chin Bick Wah into this country, and he had tried many ways to bring her over as a student nurse

(Testimony of Jean Jow Yee.)

and various ways, but they didn't work out. So then finally the subject came up that he thought, well, maybe——

Mr. Burns: I move to strike that out.

The Court: It may go out. [386]

Q. (By Mr. Schnake): You say what Mr. Fong said about some subject, what anybody else in the conversation said.

A. Mr. Fong said that—well, he was asking for ideas.

Mr. Davis: Your Honor——

Mr. Schnake: Now, wait a minute. Your Honor, she said that he said he was asking for something.

Mr. Burns: Oh, now, Mr. Schnake.

Mr. Schnake: Will the Reporter read——

The Court: Just a minute, gentlemen. The Reporter won't read anything unless I tell him to read it.

You just say what anyone said and preface it by saying whoever said it. I don't want any conclusions on your part at all, I just want to know what somebody said. Go ahead.

The Witness: Shall I continue? [387]

Q. (By Mr. Schnake): Yes.

A. Mr. Fong said that he wanted very much to bring Chin Bick Wah into this country and he tried to do so in so many ways, but they didn't work out.

So he also said that since, well, Jonathan and I have, do have family arguments and all, and Mr. Fong was aware of it, so he suggested that if Jonathan would divorce me in Reno and then when he

(Testimony of Jean Jow Yee.)

came back from Reno to apply for passport to Hong Kong and help to bring Chin Bick Wah over.

Q. Did he say how that would be done?

A. Well, he said that we were to be divorced, and he also said that if Jonathan went to Hong Kong, it would serve as a double purpose because that would give Jonathan a chance to see his mother.

Q. What, if anything, did he say about how Chin Bick Wah would be brought over?

A. Well, John was supposed to—well, would be divorced from me and then when he leaves this country he will be—well, he would be a single person and then go back there, marry her, and bring her over as a wife of a GI. And then, of course——

Q. What, if anything—pardon me, go ahead.

A. Then of course, that whatever expenses are involved, he would take care of it.

Q. What did Mr. Levy say, if anything? Well, relate the conversation as you recall it, stating the names and persons [388] who said things.

A. All right. I didn't think——

Q. What did you say?

A. I said—Yes, I said definitely I didn't think it was a good idea for one thing, because I knew it would involve the Federal Government in it and I didn't want any part of it, but——

Q. What did Mr. Levy say, if anything?

A. Well, at that time Mr. Levy didn't say very much, but it was at a later date.

Q. All right. Now, when did this later conversation take place?

(Testimony of Jean Jow Yee.)

A. I would say about a few weeks following.

Q. Before you describe the second conversation, was there anything said at this first conversation as to why William Fong wanted Gee King Yip to come over? A. You mean Chin Bick Wah?

Q. Excuse me. Chin Bick Wah, was there any conversation on that subject? A. Yes.

Q. Who said what?

A. Mr. Fong said that it is a Chinese custom to have a son and heir, and he was very much in favor of that. So he suggested that when she was brought over, when Chin Bick Wah was brought over to this country, she would automatically go [389] to live with him and in time produce an heir.

Q. Now, was there a second conversation that you can recall at which Mr. Levy was present?

A. Yes.

Q. About how long after this first conversation that you have recited?

A. Several weeks later.

Q. Where did that take place?

A. Also at the milk store.

Q. Who was present at that conversation, if you recall?

A. That would be Mr. Fong, Mr. Levy, Jonathan and myself.

Q. All right. Would you relate what was said and who said it? A. Well, every time that we——

Mr. Burns: I move to strike that, your Honor.

The Witness: Every time that——

The Court: It may go out.

(Testimony of Jean Jow Yee.)

A. (Continuing): ——we get together, the conversation would always run the same, Mr. Fong would say——

Q. This particular conversation, can you say what was said, the conversation at which you said Mr. Levy was present a few weeks later?

A. Yes. First Mr. Fong said if I would agree to such a thing, and I objected.

Q. What did you say? [390]

A. Again I said that this was quite a big step to take, it would involve the Federal Government. And so Mr. Levy says, "Well, I'm here. I'm a lawyer and I know what is right and what is wrong." So, in other words, he was——

Q. You say what he said, if you recall, the substance of the conversation. I realize you can't quote it verbatim. A. He was advising us.

Mr. Burns: I move to strike that.

The Court: It may go out.

Q. (By Mr. Schnake): Just say what he said, if you can recall. Did he use the words you have just described, or what?

The Court: Mr. Schnake, I am not going to permit you to lead this witness in any way, shape or form.

Mr. Schnake: I am asking the witness——

The Court: All right. Ask the witness what was said, and that is the limit of your questions.

The Witness: Shall I continue?

Q. (By Mr. Schnake): Yes, go ahead.

A. Mr. Levy said that he was advising us of this,

(Testimony of Jean Jow Yee.)

what was right and what was wrong and—well, I still did not agree to this.

Q. And then what did he say?

Mr. Burns. That's assuming something not in evidence.

Q. (By Mr. Schnake): If anything was said.

A. I forgot what I said. [391]

Q. Can you state if there was anything else that you can recall at that conversation with Mr. Levy or with anybody else at that conversation?

A. Well, again the same things were usually repeated over and over again.

Q. That conversation?

Mr. Burns: I move to strike that out.

The Court: It may go out.

Q. (By Mr. Schnake): Do you recall another conversation in that same period of time on the same subject? A. Yes.

Q. About how long after this last conversation you have just described?

A. About a week later.

Q. Where was that?

A. Also at the milk store.

Q. Who was present at that conversation?

A. The same people, Jonathan, myself, Mr. Fong and Mr. Levy.

Q. Can you tell us what was said at that conversation? You can give the substance of the conversation.

A. Mr. Fong again mentioned the fact that how he wanted this woman brought over here because she

(Testimony of Jean Jow Yee.)

could be so helpful to him in many ways, and the only problem was that—was to get her over here, and again he suggested that——

Mr. Burns: I will move the witness' statement "he suggested" [392] go out.

Mr. Schnake: That is the substance of the conversation, your Honor. This is a conversation four years ago and she is doing the best she can.

Mr. Burns: That is her conclusion as to what his statement was, your Honor.

The Court: Just state what the persons said and not your conclusion as to what they were saying.

The Witness: Well, sir, he——

The Court: I don't want any argument. You just do that, state what the substance of the conversation was and not your conclusions about it.

Q. (By Mr. Schnake): Did you have any conversation at this time as to why Mr. Fong couldn't go to Hong Kong?

A. Yes, Mr. Fong said that for business reasons he could not go to Hong Kong, but also that he was still married to Gee King Yip, and his intention——

Q. Did he say something about his intent?

A. Yes, his intentions were to bring a woman over but not really marry her, because if—she would be just number two in line.

Q. All right.

A. And well, she—in other words, she would just live under his roof, but not legally.

Q. Was anything said at this conversation as to what would [393] happen if the facts came out?

(Testimony of Jean Jow Yee.)

Mr. Burns: I am going to move to strike that as being leading and suggestive.

The Court: Sustained.

Mr. Schnake: Your Honor, the cases hold——

The Court: Mr. Schnake, I told you and I am not going to permit you to lead this witness. Now, that just goes.

Mr. Schnake: Very well.

Q. Can you state the conversation at this time as best you can recall it?

A. Which time is that, now?

Q. This last conversation that you have related where Mr. Levy was present.

A. Well, at every one of these conversations, the same thing was just brought up.

Q. Can you say what was said at this last conversation, if you recall, Mrs. Yee?

A. Well, Mr. Fong again suggested that he would pay all expenses involved for the divorce, for Jonathan's expenses in Hong Kong if and when he did go. And another thing was also brought up that he would pay Jonathan a monthly salary in his absence while he was in Hong Kong. In other words, just keep him on the payroll as Jonathan would be losing time from—time and pay from his job.

Q. Now, calling your particular attention to the first part [394] of 1951, do you recall the date that Jonathan Yee went to Reno, Nevada? What month that was? A. April of 1951.

Q. All right. With reference to that date, do you recall a conversation some time prior to that date in

(Testimony of Jean Jow Yee.)

1951, in which Yee Shee participated? Do you recall having a conversation with Yee Shee?

A. Yes. Well, I have had numerous——

Q. First of all, you had a conversation at that time? A. Yes.

Q. In the first part of——

A. I think in 1951.

Q. Do you recall a particular conversation in 1951 with Yee Shee respecting the subject of a trip to Hong Kong? A. Yes.

Q. Where did that conversation take place?

A. I think that conversation——

Mr. Burns: We move the witness' thought go out, your Honor.

The Court: It may remain.

Mr. Schnake: Go ahead.

A. (Continuing): The conversation took place at the milk store.

Q. And who else was present, if you know? [395]

A. At this particular meeting was Yee Shee, Mr. Fong, Jonathan and myself, and they——

Q. (Interrupting): Can you tell us how long before Jonathan went to Reno did that conversation take place? A. Possibly a month.

Q. All right. Can you relate what the conversation was?

A. Yes. You see, all along I did not agree——

Q. (Interrupting): No, just relate what was said at that conversation.

A. Can I say what I said?

Q. Yes, you may say what you said.

(Testimony of Jean Jow Yee.)

A. Well, I said that I didn't agree to this, to the divorce and the plan, and then Yee Shee said, which is Mr. Fong's mother, said that if I—he would divorce me, if Jonathan would divorce me and go along on the plan, that Mr. Fong had suggested, he would have the opportunity to see his mother, who was quite ill, and she said that if Jonathan went, it would serve a double purpose. He could, in other words, like kill two birds with one stone.

Q. Was that said? A. Yes.

Q. All right.

Mr. Burns: By whom?

A. A similar phrase, in other words——

Q. (By Mr. Schnake, interrupting): Who said that? [396] A. Yee Shee said that.

Q. What else was said at that conversation?

A. She said, well said that Jonathan could kill two birds with one stone and that——

Q. (Interruping): Did she explain what that meant? A. Yes.

Q. What did she say?

A. She went on to say that he could see his mother, which would be probably his only opportunity and—well, it was such a great opportunity, he shouldn't miss. And while he was there he could also marry Chin Bick Wah and bring her over. And then, of course, she went on to say that, well, I shouldn't stand in his way.

Q. Meaning you?

(Testimony of Jean Jow Yee.)

A. Myself. Then after numerous conversations like that with her——

Q. (Interrupting): Did you have a conversation after that time with Mr. Fong and Mr. Levy then?

A. Yes, there were, as I say, there were many meetings, usually around about once or twice a week.

Q. Now, a particular conversation I am asking you about, right before Jonathan went to Reno, do you recall that? A. Yes.

Q. Who was present at that conversation?

A. Mr. Fong, Mr. Levy, myself and [397] Jonathan.

Q. Where was that? A. At the milk store.

The Court: The conversation that you have just related, the last one, who was present at that one, the one you just finished telling us about, who was present at that conversation?

The Witness: Mr. Fong, Mr. Levy, myself and Jonathan.

Previous to that?

Q. (By Mr. Schnake): He was asking about the conversation with Yee Shee. She has already testified to that, your Honor.

Mr. Burns: I am going to object——

The Court: Just a moment. I am asking the questions. You just related a conversation. I asked you who was present at that conversation.

The Witness: Yee Shee.

The Court: What?

The Witness: Yee Shee.

(Testimony of Jean Jow Yee.)

The Court: Talk into the microphone.

The Witness: Yee Shee; that's Mr. Fong's mother, Jonathan, myself, and Mr. Fong.

The Court: Mr. Fong?

The Witness: Yes.

The Court: Anyone else present?

The Witness: No.

The Court: All right. [398]

Q. (By Mr. Schnake): Now, this conversation just prior to Jonathan's going to Reno, you have testified as to who was there and the time of it.

Mr. Burns: May we have it fixed again, Mr. Schnake?

Mr. Schnake: Your Honor, if there is an objection—Do you have some objection?

Mr. Burns: I said: Could we have it fixed again as to when this conversation was just prior going to Reno.

The Court: Go ahead.

The Witness: You mean the exact date?

Q. (By Mr. Schnake): Would you state about how soon it was before Jonathan went to Reno, if you know?

Mr. Burns: The exact date if the witness is able to do so.

A. The exact date would be a few days prior to Jonathan leaving for Reno. I am not sure of the exact date, but it was April of 1951.

Q. (By Mr. Schnake): Would you relate the conversation between yourself, Mr. Levy, Mr. Fong and Jonathan as best you can recall it.

(Testimony of Jean Jow Yee.)

A. Well, now, at that time I had consented to go along.

Q. Say what you said.

A. Yes, I consented to it, that is what I said, I consented to the idea of going along on that. And so Mr. Levy said that he had a personal friend by the name of Mr. Rutherford up in Reno who would handle the divorce case. And so Mr. Levy [399] gave Jonathan a letter of recommendation or letter of introduction and——

Q. (Interrupting): Did you see that letter of introduction? A. Yes, I did.

Q. Did you see it after that conversation that you have just described? A. Yes.

Q. About how long after?

A. Oh, possibly two or three days after.

Q. Now, at that conversation was there anything said at that conversation about the Federal Government?

Mr. Burns: I am going to move to strike that, if your Honor please, as being leading and suggestive.

The Court: The objection is sustained, counsel. I told you what you were limited to. This is not an unwilling witness, counsel. You just ask questions as to what was said.

Q. (By Mr. Schnake): Can you recall what was said at that conversation a few days prior to Jonathan going to Reno?

A. Mr. Levy said about the letter of introduction?

Q. Anything else that you can recall that was

(Testimony of Jean Jow Yee.)

said at that conversation besides the letter of introduction which you have already described.

A. Well, Mr. Fong suggested that whatever expense it involved, he would take care of it, and, well —and I just went along on the idea. [400]

Q. Did you say that? A. Yes.

Q. Now, did Jonathan go to Reno, Nevada, in April?

A. Yes, he did; I believe April 11 of that year, of 1951.

Q. Have you examined the letter in the divorce file? A. I don't understand.

Q. Which is Exhibit No. 3?

A. I saw it before he took it there.

Q. You saw this letter? A. Yes.

Q. Which is the letter dated April 10, 1951, in Government's Exhibit No. 3.

A. I saw that before Jonathan took it to Reno.

Q. All right. How long did he stay up in Reno in total, if you know? A. In total about——

Q. (Interrupting): Well, let me rephrase the question. Did he stay up in Reno until the divorce was secured, as far as you know?

A. Well, he wasn't there constantly.

Q. All right. Where was he?

A. In San Francisco.

Q. How much of the time was he in San Francisco between the time he first went to Reno and at the time he got the divorce?

A. Well, I would say half the time, I think—well, according to dates, now, his whole time was

(Testimony of Jean Jow Yee.)

about a month that he [401] stayed in Reno, but that would be according to the dates on the calendar, but actually he was there about two or three days of the week and hen he would be back in San Francisco.

Q. When he was in San Francisco, where did he stay?

A. At 1544 Powell Street, where I was living.

Q. After he received the divorce decree on May 11, 1951, do you know where Jonathan Yee lived?

A. Yes.

Q. Where? A. Also at 1544 Powell Street.

Q. Now, up to the time that he left for Hong Kong, where did Jonathan Yee live?

A. Also at 1544 Powell Street, San Francisco.

Q. During the period——

A. Excuse me. I was going to say that for all us concerned, we all knew it wasn't a real divorce.

Mr. Schnake: That may go out.

The Court: It may go out.

Q. (By Mr. Schnake): Mrs. Yee, during the summer of 1951, from May up to October of 1951, did you have any conversations with William Fong about the trip to Hong Kong?

A. Yes, we have had numerous conversations.

Q. I will show you Government's Exhibit No. 5, which is the passport application file of Yee Yuen Foon, and ask you if you had ever seen in 1951 any one of the three letters signed, [402] purportedly signed by Yee Yuen Foon, dated June 19, 1951, July 28, 1951, and September 4, 1951?

A. Yes, I have seen these.

(Testimony of Jean Jow Yee.)

Q. Will you speak louder, please?

A. Yes, I have seen these letters. In fact, I typed——

Q. (Interrupting): Did you type one of those letters? A. Yes, I typed one of them.

Q. Go ahead. Did you type one of the letters in that file? A. Yes, Mr. Fong's instructions.

Q. All right. Where did the conversation regarding typing a letter take place?

A. At the milk store.

Q. Do you recall who was present at that conversation?

A. You mean at this particular——

Q. Yes—— A. The letter?

Q. The particular conversation regarding typing a letter; can you tell us who was present besides yourself and Mr. Fong, if anyone?

A. And Jonathan. In this one instance typing the letter——

Q. Yes.

A. Because Mr. Fong dictated the letter.

Q. All right. Now, can you tell me when it was in the summer of 1951 that Mr. Fong dictated the letter? A. Well, he wrote quite a few. [403]

Q. I am talking about a particular one you typed; do you know? A. Shall I turn this?

Q. You may examine the letters, if that will refresh your recollection.

A. I believe I typed two letters.

Q. You believe you typed two of these letters?

A. Yes, these two (indicating).

(Testimony of Jean Jow Yee.)

Q. Now, you say "these two." A. Yes.

Q. Would you read the dates of the letters?

A. June 19, 1951, and July 28, 1951.

Q. Where did you type those letters?

A. At the milk store.

Q. On whose typewriter?

A. Mr. Fong's business typewriter.

Q. Now, the first letter in June of 1951, can you recall in particular who was present when you typed that one? A. Mr. Fong, Jonathan and myself.

Q. How did Mr. Fong dictate this to you, did you take it in shorthand or some other method?

A. No, I did not. He dictated it to me and I typed as he went along dictating.

Q. Now, after the letter was prepared, did you see what happened to it? [404]

A. Yes, he had Jonathan sign it.

Q. What did he say to Jonathan about signing it?

A. He said that it was to try and speed up the passport decision in Washington so that his passport would be issued.

Q. Now, look at the second letter which you believe that you typed in July. A. Yes.

Q. Of 1951. Was that also typed at the milk store? A. Yes.

Q. Who was present when you did that, if you recall? A. Mr. Fong, Jonathan and myself.

Q. And how did you type that, in the same manner?

A. Same manner, as he dictated. I just typed on

(Testimony of Jean Jow Yee.)

the typewriter.

Q. Did Mr. Fong say anything about that letter; did he say about what should be done with that letter?

A. The same thing; we had Jonathan sign it and it was just put in the mail box that same evening.

Q. Did you have a conversation in the summer of 1951 with Mr. Fong about a telegram to the State Department?

A. There were several telegrams to the——

Q. (Interrupting): I am asking if you recall a conversation with Mr. Fong about a telegram to the State Department? A. Yes.

Q. Showing you in the passport file a telegram dated July 23, [405] signed Yee Yuen Foon, did you have any conversation with Mr. Fong regarding that telegram? A. Well——

Q. Well, first say yes or no.

A. Oh. Well, I couldn't say that it was this particular one or not, but I know there were several telegrams.

Q. All right. Then can you place the date any better than the summer of 1951; how many months prior to Jonathan's going, if you know?

A. I don't quite understand your question.

Q. Do you know about how many months it was before Jonathan went to Hong Kong that you had a conversation with Mr. Fong about a telegram?

A. Well, there were several telegrams sent, is that what you mean?

Q. I want to know about any conversation with Mr. Fong about a telegram.

(Testimony of Jean Jow Yee.)

A. Well, the thing is there were several telegrams that were sent, that he would tell me sometimes—sometimes he would say I send a telegram to Mrs. Shipley about the passport application; other times he would tell me——

Q. (Interrupting): First, on that conversation you just related, where did that take place?

A. At the milk store.

Q. You know about when it took place? [406]

A. I think there is one in June some time.

Q. About in June of 1951? A. Yes.

Q. All right. Who was present at that conversation in June?

A. The conversation in June was Jonathan, Mr. Fong, Mr. Levy and myself. It was at Mr. Levy's suggestion that——

Q. (Interrupting): What did Mr. Levy say?

A. Mr. Levy said that a telegram would be in order so that this passport division, or the department, would not just file the letter away and forget about it.

Q. Now, do you recall a particular conversation in the summer of 1951 with Mr. Levy regarding utilities? A. Yes.

Q. First tell me where that conversation took place? A. At the milk store.

Q. Who else was present?

A. Mr. Levy, Mr. Fong, Jonathan and myself.

Q. Do you know how long after you secured the divorce in relation to any other date that conversation took place?

(Testimony of Jean Jow Yee.)

A. Possibly a week or two had passed since Jonathan came back from Reno that Mr. Levy suggested——

Q. (Interrupting): What did he say?

A. Excuse me. Mr. Levy said that it would look better if I should change the P. G. and E. bills in my name, the telephone in my name, and also he suggested that some sort of [407] —something should be, well, should be made for the division of community property, just so it would look right.

Q. What if anything did you say when he made those remarks?

A. I said I would take care of it, but I didn't right away.

Q. You did not do that right away?

A. Not right away. I didn't attend to that, the utilities part, I didn't attend to until just before Jonathan left for Hong Kong, possibly about a week before he left.

Q. About a week before he left, what did you do regarding the utilities?

A. Well, I changed to my name; it was under his name first and then I changed it in my name, as well as the telephone.

Q. All right. Now, during the summer of 1951, did you have a bank account with Jonathan Yee?

A. Yes.

Q. As a matter of fact, when did you first open your bank account at the Bank of Canton, if you recall? Approximately what year?

(Testimony of Jean Jow Yee.)

A. Approximately 1949.

Q. What type bank account was that?

A. Commercial, commercial joint account.

Q. Joint account? A. Yes.

Q. Did you both write checks on it?

A. Yes. [408]

Q. During the year 1951, did you make any change in that bank account? A. No.

Q. And during the year——

A. (Interrupting): It still stands, even today.

Q. In other words, from 1951 up to the present time has there been any change?

A. No, there has not. I should say maybe even since it was opened it has never been changed.

Q. Calling your particular attention to September of 1952—excuse me, 1951. A. 1951?

Q. Yes. Do you recall having an argument with Jonathan Yee about a woman named Lucile?

A. Yes.

Q. About when did that occur, if you can tell us, as exactly as possible?

A. I usually recall some incident that ties in with some, either other incident or a date.

Q. What date do you recall here?

A. This particular date I tied in was September 8.

Q. What is September 8?

A. Well, it is supposed to be my wedding anniversary.

Q. Just prior to September 8, 1951, did you have this argument? [409] A. Yes.

(Testimony of Jean Jow Yee.)

Q. How many days before your anniversary?

A. Possibly two.

Q. Two days? A. Yes, two days.

Q. Was that the first time that you had ever had an argument regarding that subject of this girl named Lucille? A. Yes.

Q. At that time did you go with William Fong in an automobile?

A. No, that was a few days later. At the time of the argument, what I wanted to ask Jonathan was——

Q. No, you just tell me the dates, that is all I want to get. A. Oh. No, about two days later.

Q. After the argument?

A. About one day later after the argument. It was on a Saturday night.

Q. All right. Is your recollection clear regarding the period of the week in April of 1951?

A. Yes.

Q. Before the divorce? A. Yes.

Q. At any time in April of 1951, did you have an argument with Jonathan Yee on that subject?

A. No, not—you mean with that Lucille?

Q. Yes. [410]

A. No, she didn't really come into the picture until a much later date.

Q. Later than April?

A. Much later, possibly July, August—possibly August.

Q. I see. And during the weeks of April, 1951, did you have an argument or fight with Jonathan

(Testimony of Jean Jow Yee.)

Yee that you know of? A. No.

Q. All right.

A. I am quite certain because I had agreed to the divorce plan and he was leaving, and then when he did come back, I was anxious—well, I was anxious to see him. So I would say we got along quite well at that time.

Q. Now, do you recall October, 1954, when Jonathan Yee went to Hong Kong? A. Yes.

Q. Just prior to his going to Hong Kong, did you have a conversation with Bill Fong about a ticket?

A. No, I didn't have the conversation.

Q. I see. Did you ever see that plane ticket?

A. Yes.

Q. Do you know where Jonathan Yee got the ticket? A. Yes, he told me.

Q. Where did he get it?

A. From the milk store.

Q. Did you see Jonathan at the airport on his departure? [411] A. Yes.

Q. Are these pictures, Exhibits 7, 7-B, 7-A, 7-C, are those the pictures that were taken at the airport at the time of Jonathan's departure? A. Yes.

Q. Who is the elderly woman on the right-hand side of those pictures?

A. That is Mr. Fong's mother, Yee Shee.

Q. Was there anybody else came to the airport at the time Jonathan went to Hong Kong?

A. Yes, there was the fellow that Jonathan was working for, a carpenter by the name of Henry Leo.

(Testimony of Jean Jow Yee.)

and there was a little bit later, but before the plane departure——

Q. Later than those pictures were taken?

A. Yes, I think we ran out of film, couldn't get the rest of them then.

Q. Who else arrived?

A. Ruby Yee, which is Ruby—Pearl Chin, which is Mr. Fong's sister.

Q. First, is Ruby Yee, is that Ruby Fong Yee?

A. That's right, Mr. Fong's sister.

Q. Who else? A. Pearl Chin.

Q. Who is Pearl Chin?

A. Also a sister of Mr. Fong's. And they brought another [412] lady, also Mary—I can't think of her name, but she was a Caucasian.

Q. All right. When Jonathan left to get on the plane, how did you say goodbye to him, if at all?

A. Well, I was——

Q. Just answer the question.

A. Well, I kissed him goodbye and shed a few tears.

Q. All right. Did you have a conversation with anybody at the airport around the time of that departure? A. Well, yes.

Q. With whom?

A. I was, well, feeling quite bad about it after he got on the plane and Ruby Yee told me that——

Q. (Interrupting): Who was present when she talked to you? A. Who was present?

Q. Yes. Who else was within earshot so that they could hear the conversation?

(Testimony of Jean Jow Yee.)

A. Well, Yee Shee was there, William Fong, Pearl Chin and this other lady, the Caucasian lady.

Q. They all still standing near you?

A. Yes, all standing—well, maybe a foot or two away.

Q. All right.

A. And so Ruby just patted me on the shoulder and told me I was doing a very noble thing, allowing Jonathan to go see his mother, who was ailing, and able to bring back a woman [413] for Mr. Fong, because I knew that—this was Ruby, Ruby said that; I knew very well that her brother wasn't happy in his marriage and that this was a woman he loved and—in other words, they were all very grateful.

Q. Is that what she said? A. Yes.

Q. Did Mr. Fong say anything?

A. Well, from time to time he said——

Q. (Interrupting): No, At that conversation.

A. No.

Q. Going back a moment in time to that same summer of 1951 just before Jonathan went to Hong Kong, do you recall a particular conversation at which Mr. Levy was present regarding any arguments between you and Jonathan?

A. Prior to his——

Q. Prior to Jonathan's going to Hong Kong in the summer of 1951.

A. Well, usually Mr. Levy wasn't in any of the arguments.

(Testimony of Jean Jow Yee.)

Q. Do you recall—no, I am talking about a conversation with Mr. Levy regarding the fact of there having been some arguments between you and Jonathan. A. No.

Q. Do you recall a conversation with Mr. Fong about that? A. Excuse me?

Q. Did you have a conversation with Mr. Fong about that in [414] the summer of 1951?

A. I might have, but I was going to say I had occasion to talk to Mr. Levy after Jonathan went to Hong Kong.

Q. On that subject?

A. On the subject of arguments and such.

Q. Was Jonathan in Hong Kong at the time?

A. He was in Hong Kong at the time.

Q. Now, who was present at the first of such conversations when Jonathan was in Hong Kong, on that subject?

A. That was Mr. Levy, Mr. Fong and myself.

Q. Where was that conversation?

A. At the milk store.

Q. Who else was present, if anyone?

A. Just the three mentioned.

Q. All right.

Mr. Burns: Can you fix a more definite time?

Q. (By Mr. Schnake): How long after Jonathan went to Hong Kong did that take place, the first conversation on that subject?

A. Possibly late in November or early December.

Q. Of 1951? A. That's right.

Q. What was said? A. Between——

(Testimony of Jean Jow Yee.)

Q. You and Mr. Levy and Mr. Fong, if you recall?

A. Well, Mr. Fong always said to me—— [415]

Q. (Interrupting): No, no. Tell us what Mr. Fong said on this occasion, if you can recall.

Can you state the substance of what he said? I am not asking you to repeat verbatim. What did Mr. Fong say? Go ahead.

A. Yes, Mr. Fong says, well, he appreciated what I was doing for him, and well, and he knew that I was doing my part. He didn't know how Jonathan was doing his part. [415-A]

Q. Was there anything said at that conversation about arguments, that is what I asked about.

A. Well, somehow or other the arguments—no, I don't think the arguments were really brought up, but, well, we did use to always look for mail and——

Mr. Burns: I am going to move to strike that out as not responsive, your Honor.

The Court: It may go out.

Q. (By Mr. Schnake): Now, during the time that Jonathan was in Hong Kong did you receive any letters from him? A. Yes.

Q. Approximately how many?

A. Approximately once or twice a week.

Q. Did you ever read any of those letters or any portion to Mr. Fong?

A. Yes, he usually suggested, he usually asked to see the whole letter, or else I read them—well, the most parts of it to him over the phone, if he wasn't present at the time.

(Testimony of Jean Jow Yee.)

Q. How often, if at all, did Mr. Fong come to your home during the time Jonathan was in Hong Kong? A. About once or twice.

Q. Was Mr. Levy ever there?

A. I believe once. Excuse me, you mean——

Q. At your home while Jonathan was in Hong Kong?

A. No, but Mr. Levy came once, I believe, when he brought me [416] something to sign about the Reno divorce.

Q. Now, on that point, Mrs. Yee, I'll show you Government's Exhibit—rather Defendant's Exhibit C, the power of attorney, and ask you if that is your name? A. Yes.

Q. Is that your signature?

A. That is my signature, right.

Q. Now, where did you sign that document, do you know? A. At my home.

Q. At your home. Who was present when you signed it?

A. Mr. Levy and Mr. Fong. After I signed it I just returned it to them.

Q. Who did you give it to?

A. Gave it to Mr. Levy, because he was to return it to somebody up in Reno.

Q. Did he say that? A. Yes.

Q. Did you sign that power of attorney in the presence of a notary public?

A. No, I signed that in my home.

Q. Did anybody at the time you signed that ask you to raise your hand and swear that the state-

(Testimony of Jean Jow Yee.)

ments therein were true? A. No.

Q. Or rather to swear that it was you who executed that document? [417]

A. No. I mean, there was no question about it, they just told me to sign it and, well, I naturally read what it was all about, I thought, well——

Q. (Interrupting): Tell us what you did.

A. Then it is okay to sign because as they explained to me, it was just a power of attorney, getting an attorney to represent me in the divorce case.

Q. At the time that Jonathan was in Hong Kong was anyone staying at your home? A. Yes.

Q. Who? A. My sister.

Q. How much time did she stay there?

A. Twice a week.

Q. What is her name? A. May Jow.

Q. Did she visit your home in the summer before Jonathan went to Hong Kong? A. Yes.

Q. Did she ever stay overnight? A. Yes.

Q. While Jonathan was in Hong Kong did you receive a telephone call from him? A. Yes.

Q. Do you recall who was present when you received the [418] telephone call?

A. No one but myself.

Q. Did you have a conversation with Mr. Fong about a telephone call from Hong Kong?

A. Yes.

Q. Where did you have that conversation?

A. Well, the telephone call came at six o'clock in the morning.

Q. The first one from Jonathan? A. Yes.

(Testimony of Jean Jow Yee)

Q. Then did you have a conversation with Mr. Fong about it?

A. Well, I was supposed to deliver a message to Mr. Fong stating that——

Q. (Interrupting): First tell me, do you know when you talked with Mr. Fong about that, about delivering this message?

A. Well, I talked to him just later in the day.

Q. About how long after Jonathan went to Hong Kong did you receive this telephone call?

A. About—not quite a month.

The Court: I think this is a good time to take our recess. We will take a recess until tomorrow morning at 9:45. Remember the admonition heretofore given you about not discussing the case. [419]

Thursday, July 12, 1956—9:45 o'Clock A.M.

JEAN JOW YEE

a witness recalled to the stand. Previously sworn.

The Court: The jurors are present; proceed.

Direct Examination
(Continued)

By Mr. Schnake:

Q. Mrs. Yee, yesterday you had testified regarding certain conversations in 1951. Do you recall any conversation in 1951 with Mr. Levy regarding the subject of any contacts with the Government? Just answer yes or no. A. Yes.

(Testimony of Jean Jow Yee.)

Q. Do you recall approximately when that was?

A. The conversation was one or two weeks before Jonathan went to Reno.

Q. In April of 1951? A. Yes.

Q. That trip to Reno?

A. Yes, that's right.

Q. Where did that conversation take place?

A. At the milk store.

Q. Who was present? [421]

A. Mr. Levy, Mr. Fong, Jonathan and myself.

Q. Can you relate what was said?

A. At that time I protested——

Q. (Interrupting): Did you say that?

A. I protested.

The Court: What did you say?

The Witness: I said I didn't want to do anything to be involved with the Federal Government. Mr. Levy assured me——

Q. (By Mr. Schnake): What did he say?

Mr. Burns: Move to strike that.

Q. (By Mr. Schnake): Just use the words he said instead of assured.

A. He said, Mr. Levy said, "Of course, we do not want this, all this to get out because—" at the time he mentioned that he would lose his license and that we should all get together, that if the Immigration or anyone should ask of it, we should all stick together and tell the same story.

Q. What if anything did Mr. Fong say?

A. Mr. Fong agreed to that.

Q. No, just what he said.

(Testimony of Jean Jow Yee.)

A. He said yes, that was right That was definitely so.

Q. What if anything did you say at that conversation?

A. I said I still didn't want any part of it and as far as it goes I would not take the trip to Reno, that was why Jonathan went. [422]

Mr. Burns: I am going to move the last portion of the witness' statement be stricken.

The Court: It may go out.

Q. (By Mr. Schnake): Mrs. Yee, do you recall any conversation at any time in 1950 or 1951 with Mr. Fong regarding the subject of any favors?

A. Yes, that was——

Q. (Interrupting): Well, first of all, tell us when that occurred.

A. That was brought up about December of 1950.

Q. Can you tell us who was present at that conversation?

A. I believe at that conversation was just Jonathan, Mr. Fong and myself.

Q. Where did that take place?

A. That was at the milk store.

Q. Can you relate what was said?

A. Mr. Fong said that he was asking Jonathan to do this favor for him because he brought Jonathan into this country from a bought paper.

Q. Can you relate any of the rest of that conversation, if you can recall?

A. Yes. And he also said that if Jonathan did

(Testimony of Jean Jow Yee.)

this favor for him he was returning the favor of bringing Jonathan over here.

Q. Did you ever have a conversation with Yee Shee on that [423] subject? A. Yes.

Q. Of favors? Can you tell us when that occurred?

A. That occurred at a later date.

Q. Later than December, you mean? How much later?

A. I would say around February or March.

Q. Of what year? A. Of 1951.

Q. Where did that take place?

A. That possibly took place at her apartment, 1041 Washington Street.

Q. Who was present at that conversation?

A. Mr. Fong, Yee Shee, Jonathan and myself.

Q. Would you relate what was said?

A. Yes, Yee Shee said that if I let Jonathan go and do this favor for him, well, that would give Jonathan a chance to see his mother who was ill, and also to bring Chin Bick Wah over, in other words, bring a woman over for him.

Q. Now, do you recall any of the rest of that conversation?

A. At that particular conversation?

Q. Well, if that is all you can recall.

A. That is about all I can recall at that particular time, but there were numerous——

Q. (Interrupting): Was there a later conversation on that same subject with Yee Shee? [424]

A. Yes.

(Testimony of Jean Jow Yee.)

Q. When did the later conversation with Yee Shee on the same subject take place?

A. About March, latter part of March.

Q. Of what year? A. 1951.

Q. Who was present at that conversation?

Mr. Davis: May I ask where it was?

Mr. Schnake: I will get it. He wants to know where it was, I can only ask one question at a time.

The Court: All right.

Q. (By Mr. Schnake): Tell us first who was present?

A. That was Yee Shee, Mr. Fong, Jonathan and myself.

Q. Where did it take place?

A. At 1041 Washington Street.

Q. Can you relate what was said?

A. Yee Shee again said that she would like very much for Jonathan to see his mother once more, as she was ailing.

Q. As who was ailing?

A. Jonathan's mother was ailing, and it would give him a chance to see her if she should pass away, and again, also, that give him, rather give—have Jonathan bring Chin Bick Wah over for Mr. Fong. In other words, she was——

Q. (Interrupting): Just say what she said in substance, if you can. [425]

A. She was asking me to consent to the divorce, and it was at this time that I finally gave in.

Q. What did you say?

A. I said, well, I will go through with it as long

(Testimony of Jean Jow Yee.)

as I don't have to do any of the things that was necessary, like taking a trip to Reno and things like that.

Q. All right. Now, in the summer of 1951, before Jonathan went to Hong Kong, I believe you testified yesterday to Benton Fong making this, going with you to find Jonathan, is that right? Just answer that yes or no, if you recall that testimony yesterday about Benton Fong going with you to find Jonathan.

A. That wasn't the purpose of our trip.

Q. Well, do you recall going with him?

A. I did go with him, yes.

Q. Do you recall what event with relation to Benton Fong that that was close to? A. Yes.

Q. What event was that?

A. First could I say that we were going out to buy the Sunday paper.

Q. All right.

A. That was the reason for the ride.

Q. I see. You were with——

A. I was with Benton Fong in a car to go down to Chinatown [426] to buy the Sunday papers, and it was on our way down that we saw Jonathan's car and so we just stopped and watched.

Q. Now, what event, though—I am trying just to determine the date on that, what event with relation to Benton was that close to?

A. Well, that, all I could recall was that Benton's wife was giving a wedding shower or kitchen

(Testimony of Jean Jow Yee.)

shower of some kind to a cousin of hers, of P a-ton's wife.

Q. What was her name?

A. Her name was Bernice Shoo.

Q. What was the date of that? As close as you can recall. A. Around September 9.

Q. Of what year? A. 1951.

Q. During the summer of 1951 did you attend Vivian Fong's wedding reception?

A. Yes, I did.

Q. What date was that?

A. That was August 19, 1951.

Q. August 19, 1951? A. Yes.

Q. Did you see William Fong there?

A. Yes, he was the father of the bride.

Q. Yes, that's Vivian Fong, the daughter of William Fong, is that right? [427]

A. Yes.

Q. Who did you attend that wedding reception with?

A. Well, there were several people. Shall I name them?

Q. Who did you actually go with to the reception? A. Well, Jonathan took us.

Q. In the family car? A. Yes.

Q. Who else went with you?

A. Well, there was my sister.

Q. All right. A. And my daughter.

Q. Is that May Jow?

A. Yes. My daughter. Right offhand that is all I can think of.

(Testimony of Jean Jow Yee.)

Q. That actually traveled in your car?

A. Well, just previous to the reception—could I say that?

Q. Well, I was going to ask you next about the wedding itself. What part, if any, did Jonathan play at the wedding? A. He was one of the ushers.

Q. Can you describe what occurred just prior to the actual reception?

A. Yes. The custom in many parts of town seems to be——

Q. (Interrupting): No, don't describe the custom, just describe what happened.

A. I say after the wedding what happened was that, we, well, [428] all went in cars and they usually take the bride and groom leading the procession in the car, driving around Chinatown blowing the horns and all and several cars in the procession and ours was one of them.

Q. Who was in that car?

A. Well, Jonathan was driving, and then my sister, myself and daughter.

Q. All right. Yesterday you had started to describe a telephone call that you had received from Jonathan while he was in Hong Kong.

A. Yes.

Q. I believe that you testified that was a short time after he had arrived in Hong Kong?

A. No, the call——

Q. (Interrupting): How long?

A. ——came——

Q. How many weeks or months?

(Testimony of Jean Jow Yee.)

A. Well, it was about three weeks to four weeks after he had gotten there.

Q. You testified yesterday that you were told to give Mr. Fong a message? A. That's right.

Q. Did you see Mr. Fong that same day?

A. Yes.

Q. What message did you you give him, if [429] any?

A. Well, I didn't see him actually to deliver the message, I called him up on the telephone.

Q. All right.

A. I received a call at six o'clock in the morning and being that I had to go to work about eight, I called him from the office.

Q. Called Mr. Fong from your office?

A. Yes.

Q. What did you say?

A. I gave him the message Jonathan had said he didn't feel like going through with the—well, the words he used, he didn't feel——

Q. Use the words you can best recall that you gave to Mr. Fong.

A. That Jonathan said he was not going through with it, and he said Mr. Fong knows what I mean. And on top of that he says he can't live on nothing because the expenses were quite high in Hong Kong. So he said that—have Bill Fong call me as soon as he can. He says also that he needed some extra money.

So I delivered the message to Mr. Fong, I called him on the phone and told him of it, and much later

(Testimony of Jean Jow Yee.)

in the day then I saw Mr. Fong and by that time he told me he had made the call already.

Q. To where? A. To Hong Kong. [430]

Q. Did he say what he had talked about? Did he say anything about that call?

A. Incidentally, could I go back to the phone call?

Q. Well, you recall something else?

A. Yes.

Q. Which phone call are you talking about?

A. With Jonathan.

Q. All right.

A. Also Chin Bick Wah was in Hong Kong.

Q. Who said that?

A. Jonathan told me Chin Bick Wah was right there beside him at the phone and she would like to talk to me. And so I said that I didn't have anything to say to her, being I didn't know who she was, and so Jonathan said that she just wanted to say hello and more or less thank me for what I am doing.

Q. Did you talk to Chin Bick Wah?

A. I did not.

Q. And then during that time that Jonathan Yee was in Hong Kong did you know where his clothing and other personal effects were?

A. Yes, at my home at 1544 Powell Street.

Q. Now, you recall in February, 1952, when Jonathan Yee returned from Hong Kong?

A. Yes.

Q. Who was at your home at the time? [431]

(Testimony of Jean Jow Yee.)

A. My sister May.

Q. Was she actually staying at the home overnight?

A. Yes, Jonathan came in so early in the morning we were still in bed.

Q. What time was that?

A. Well, it was before seven in the morning.

Q. Would you describe what occurred when he came in the home at that time?

A. Well, as I can remember, we were, my sister and I were still asleep and heard a key in the lock. Well, naturally——

Q. (Interrupting): Just describe what you said or did, not what you were thinking.

A. Well, he had a key in the lock, so right away we decided to get up and see who was trying to come in the door. The next thing we know that Jonathan had brought his suitcases in.

Q. Did May Jow remain at the home that day or depart, or what?

A. Well, by the time I got up and got ready, you know, she had to go to work and I went to work, too, for a white. In other words, I had to report in the office that day and then I told them that my husband had come home and I would like the rest of the day off. But I couldn't get away until about eleven or twelve.

Q. After Jonathan returned from Hong Kong were there any occasions that May Jow was as your house, I mean, in those [432] weeks after Jonathan returned did she ever make any trips to the home?

(Testimony of Jean Jow Yee.)

A. Yes, she stayed occasionally.

Q. Did she ever stay overnight when she came?

A. Yes, she did.

Q. Now, do you recall March 16, 1952, when Chin Bick Wah arrived in the United States?

A. Yes, very well.

Q. Can you describe—first of all, did you go to the airport to meet her? A. Yes.

Q. Who did you go with?

A. Jonathan and my daughter.

Q. How did you get there?

A. By car, Jonathan drove.

Q. Who else did you see at the airport?

A. Mr. Fong was there with his sister Ruby Yee. Mr. Levy came in his own car.

Q. Do you know when Mr. Levy arrived in relation to your arrival?

A. Well, I saw him there. There was also other people.

Q. Would you describe who else was there?

A. There was Mr. and Mrs. Wong from Oakland. That is——

Q. Who are they?

A. Chin Bick Wah's aunt. [433]

Mr. Davis: Ask that go out as being an opinion and conclusion of the witness.

Q. (By Mr. Schnake): By what name did you know these people?

A. The man's name is Wong Bing.

Q. Wong Bing?

(Testimony of Jean Jow Yee.)

A. Yes, and the woman's name is—we call her Jueng.

Q. By what other name is she known? What is her family name? A. Chan.

Q. Chan Jueng is her name? A. Yes.

Q. All right.

A. There were also two other men there; I believe one was a Wong and I don't know who the other one was, but—shall I continue?

Q. As to who was there and what you saw at the airport, yes.

A. Well, as the plane landed, well, the first one to step forward was Chan Jueng and so she escorted her over to the——

Q. (Interruping): Escorted who?

A. Chin Bick Wah over to where the rest of the group was standing. And so Jonathan came forward and right away Chin Bick Wah handed him her traveling bag, one of those that you carry on the plane, and then she just walked away with Chan Jueng and they had a few words together and one of the young men that was there, I believe he was a Mr. Wong, gave her a [434] gardenia, or some sort of corsage, and pinned it right on her.

And then we went into the waiting room to more or less check, wait for her baggage, and we all stood around and talked, and it was at this time that—no, just prior to coming inside Mr. Fong was introduced to her, and then we went into the waiting room.

(Testimony of Jean Jow Yee.)

Q: Who introduced Mr. Fong to Chin Bick Wah at that time?

A. I believe it was Jonathan, and then as soon as we got inside the waiting room then Mr. Levy was in the circle and he was introduced.

Q. To whom?

A. To Chin Bick Wah. And so we just stood around and talked a little bit waiting for her luggage to come off the plane.

Q. Was there any conversation about dinner?

A. Yes, Mr. Fong suggested that we all should get together and have a drink and dine because of her safe arrival, and so he suggested that we all meet at the restaurant when we got back into town, because this was the San Francisco airport.

Q. Yes. Now, was there any conversation with Mr. Levy on that subject of dinner?

A. Yes, Mr. Levy said he couldn't make it, he wouldn't join us because of the fact that he had another commitment, something like a dinner with the family, or taking his family out, and he did not join us.

Q. Did you go to a restaurant, then? [435]

A. No, not right away.

Q. Was there further conversation at the airport?

A. Very little. But—well, finally her baggage arrived and Mr. and Mrs. Wong, the aunt and uncle took the luggage and put——

Mr. Davis: Ask the aunt and uncle go out.

(Testimony of Jean Jow Yee.)

The Court: Well, it is descriptive; I will permit it.

Q. (By Mr. Schnake): Go ahead.

A. Aunt and uncle, Wong Bing and Chin Jueng took her luggage.

Q. Took whose luggage?

A. Chin Bick Wah's luggage and put it in their car and saying they were going to take her to Oakland afterwards, where she was to stay. They either own or they manage a hotel on 8th Street, I believe.

Q. All right.

A. From there on, well, we each went to our own cars, Mr. Levy went to his and he took off, and then Jonathan and my daughter and I went to our car and we took off and then Mr. Fong, Chin Bick Wah and Ruby went in his car, in Mr. Fong's car, and the next stop was to go and see Yee Shee at 1041 Washington Street.

Q. Did you go there?

A. Yes. We said, well, we would—we said we would be either at the restaurant or at Yee Shee's place.

Q. Who did you say that to? [436]

A. We told that to Mr. Fong.

Q. All right.

A. So you know how traffic goes——

Q. Just describe what you did.

A. We got there first and then shortly Mr. Fong, Ruby and Chin Bick Wah came over to Yee Shee's place at 1041 Washington Street.

(Testimony of Jean Jow Yee.)

Q. Did you have any conversation there at Yee Shee's apartment at 1041 Washington Street?

A. Yes, we just—well, talked a little.

Q. Who was there, first of all?

A. Well, there was Jonathan, myself, my daughter, Yee Shee, Mr. Fong, Ruby Yee and Chin Bick Wah.

Q. Can you describe the conversation, anything you can recall of it? Don't describe, say what was said, if you can recall.

A. Yee Shee said she was glad that Chin Bick Wah had a safe arrival, and we all said a little something or other relating to that. And then we said that——

Then Mr. Fong asked his mother to come down to the restaurant and dine, and she wouldn't go.

So coming downstairs, so we were there just a short time, so after that we left and Mr. Fong and Chin Bick Wah and Ruby led the way going downstairs, I mean.

Yee Shee lived on the third floor, so we were going—— [437].

Q. Did you go to the restaurant, then?

A. We were going down the stairs, and then Mr. Fong stopped by his apartment, which was in the same building as Yee Shee's and showed it to Chin Bick Wah.

Q. Were you there when he did that?

A. Yes, I was right in back of her, right in back of Chin Bick Wah, and I heard him mention that, Mr. Fong says this is where I live, he said that.

(Testimony of Jean Jow Yee.)

and Chin Bick Wah didn't say anything, she just looked.

And then he mentioned that, Mr. Fong mentioned that his sister lived here and another sister lived downstairs on the way down.

In other words, he just pointed to the doorways. And then afterwards we went to the restaurant, which was the Sun Hung Heung restaurant on Washington Street. I don't remember the number of it, but it is right near the City Hall there.

Q. Would you describe what occurred at the restaurant?

A. Well, at the restaurant we all—well, we, when we got to the restaurant Chan Jueng and Wong Bing were there and the other two young men that I spoke of earlier, and we had this booth, this large booth and all of us sat around a table.

Q. Was Fong there?

A. Yes, he was there.

Q. Who else?

A. Yes. Well, Chan Jueng, Wong Bing and the other two young [438] men were there, were first, then Mr. Fong, Chin Bick Wah and Ruby came in their car and Jonathan, myself and my daughter came in the other car, and we were all there sitting around at the table.

And then, well, we just—well, the waiter came and he asked for, I think it was a drink.

In other words, a toast for her safe arrival, and then she——

Q. Who said that?

(Testimony of Jean Jow Yee.)

A. Mr. Fong suggested that.

Q. What did he say?

A. Have a toast of safe arrival, and so I think everybody just drank sparkling cider and there was some other hard liquor.

Q. It doesn't matter, Mrs. Yee, just describe what was said by Mr. Fong, or what he did.

A. He says we are all gathered here together on this happy occasion and we should drink a toast to it. And so then we all stood up and drank to that.

And then shortly after that Chin Bick Wah suggested the same thing and she said it was a happy occasion and she was glad to be here, and we drank to that.

Q. After the dinner where did you go?

A. After the dinner, then Mr. Fong had to return to the store. [439]

Q. What did he say about that?

A. He said that you folks go on ahead, first to Oakland, and I will be there later. He was gone most of the afternoon from the store, so he said he had to go back and tend to business.

Q. Did you go to Oakland, then?

A. Yes. We all then went to Oakland.

Q. How did you go to Oakland, who did you ride with?

A. Jonathan drove and—Jonathan drove and then I was in the car and Joanne was in the car and Ruby Yee was in the car.

(Testimony of Jean Jow Yee.)

Q. In your car? A. Yes, in our car.

Q. How did Chin Bick Wah get to Oakland is what I want to know?

A. Chan Jueng and Wong Bing and the other two fellows and Chin Bick Wah were in the other car.

Q. Now would you describe what occurred at the hotel in Oakland, if you know?

A. Well, Chan Jueng, Wong Bing, Chin Bick Wah and the others arrived first, so they removed her luggage and they all went upstairs and when we got there everybody was sitting around comfortably.

Q. Where? A. At the hotel on 8th Street.

Q. Do you recall anything regarding the hotel registry?

A. No, nothing was mentioned of it at that time because [440] Chin Bick Wah said she didn't feel so well, so we said—she said she didn't feel so well, being that she was airsick, and she would just as soon, if she could take a little rest.

So right way she changed in her, well, lounging pajamas, like, and so we thought, well, that was——

Q. No, not what you think, Mrs. Yee.

A. All right. So——

Q. Just describe what occurred.

A. Shortly after that we decided to leave.

Q. And had Mr. Fong arrived by the time you left? A. Yes, he had arrived.

Q. Do you recall anything occurring when Mr. Fong was there before you left?

(Testimony of Jean Jow Yee.)

A. I think he suggested about having, going out a little later on and having dinner or something.

Mr. Davis: I move anything he thought go out, that she thought.

Mr. Schnake: She thought he said that.

A. I didn't think it myself, I am pretty sure he said that, something about dinnner mentioned. We all declined, saying we just ate and, well, he suggested that.

Q. All right. Now when you left was Mr. Fong still there? A. Yes, he was.

Q. Who did you leave with?

A. Jonathan, and by that time Ruby Yee had to go back to her [441] family.

Q. And she departed?

A. She went with us, we took her to her house.

Q. Who was left at the hotel when you left, then?

A. Well, Wong Bing, Chan Jueng, Mr. Fong and Chin Bick Wah.

Q. All right. And is this the hotel where Wong Bing and Chan Jueng lived and operated the hotel?

A. Yes.

Q. So far as you know? A. Yes.

Q. Did you spend that night at the apartment, at your own apartment?

A. Yes. Well, we took Ruby home and stayed at her house for a short while and then we left to come home to San Francisco.

Q. Was Jonathan Yee there?

A. Yes. He drove the car.

Q. Where did he spend the night?

(Testimony of Jean Jow Yee.)

So then Chan Jueng also said the same thing, he was being quite unreasonable about it, that at least if he had that in mind he should have bought a house or furnished an apartment [446] of some kind.

Q. Where was Gee King Yip living at this period of time, if you know?

A. Well, she was working at the milk store and she was living at 1041 Washington Street in the same building as Yee Shee.

Q. Did you have any other conversations with Chin Bick Wah in the early summer of 1952 before the Seattle episode? A. Yes.

Q. About how long after either of these conversations you have described did any other conversation occur?

A. Well, the baby was born in June, and during either the middle or latter part of June was another meeting.

Q. With Chin Bick Wah? A. Yes.

Q. Where? A. At my home.

Q. Who was present?

A. Chan Jueng and Chin Bick Wah.

Q. What was said?

A. They came over to see the baby and to bring the baby something. But I said, well, I didn't want to accept any gifts, and so they told me——

Q. Who said——

A. Chan Jueng and Chin Bick Wah told [447] me——

Q. Say what each said individually, as you recall. A. Jonathan——

(Testimony of Jean Jow Yee.)

Q. No, first tell us who said anything.

A. Chan Jueng said that Jonathan said he wouldn't accept any gifts from anyone and Chin Bick Wah says, "Yes, that is what he said, I don't know why he is so stubborn about."

Q. Referring to Jonathan?

A. Referring to Jonathan. This was just the matter of a baby gift. So I said, "Well, I wasn't really accepting any gifts from the outside."

In other words, just say, within my immediate family I would accept them, but not from any outsiders.

Q. Did you have any further conversation with Chin Bick Wah at that time?

A. Yes. Well, again she brought up the fact that——

Q. Say what she said.

A. She was very grateful, she said she was very grateful being over here and again Mr. Fong was so unreasonable that she just didn't know what to do and she was again moaning the fact that——

Q. Just say what she said, don't describe it, Mrs. Yee.

A. She said she didn't have very much money to spend and that she was, well again she wanted a house, either a $20,000.00 or a building in her name before she would go through with it. [448]

Q. Now, Mrs. Yee, during the period from Jonathan's arrival from Hong Kong in February of 1952, up to August of 1952, did you have any arguments or difficulties with your husband?

(Testimony of Jean Jow Yee.)

then? A. No.

Q. This was just prior to your baby being born?

A. Yes, sir, that's why I wasn't out of the house too much either.

Q. Do you recall what was said at that conversation?

A. Well, again she repeated how grateful she was of my stepping aside and allowing her to come into the United States. [444] And then she also said being that we were alone she spoke a little more freely.

Q. Just say what she said that indicated she spoke more freely.

A. She said that the way it is she would not just go and live with Mr. Fong with no, with nothing legal in her name, and so she said that she wanted at least a building in her name or a $20,000.00 home.

In other words, some sort of security to fall back on.

Q. Did she use the word security?

A. Yes.

Q. In Chinese?

A. Yes. She says as it is now she had been in the United States over a month or two and she said that he wasn't giving her very much spending money.

Q. "He" meaning whom?

A. Meaning Mr. Fong.

Q. Did she say that?

A. Yes, she said that. And that she wouldn't go through with the arrangement, that she, well,

(Testimony of Jean Jow Yee.)

she wanted a little bit more security before she would go to actually living with him.

Q. Go ahead.

A. And also the fact, she says, well, just wait, she told me to be patient, wait a little longer and then as soon as she establishes a certain length of residence here she would go to [445] Reno and get a divorce from Jonathan.

Q. Was there a conversation around this period of time regarding any arguments between Chin Bick Wah and Mr. Fong? A. Yes.

Q. Can you recall about when that was in relation to Chin Bick Wah's arrival in the United States?

A. I believe that was brought up at the first meeting, which was about a month, about three weeks or a month after she arrived and when Chan Jueng and Chin Bick Wah came over to see me.

Q. That is the conversation you first described?

A. Yes, that was at the first conversation. You see, the second time she came by herself.

Q. All right. The first conversation when Chan Jueng was there, tell us what if anything was said on that subject.

A. Yes. Well, Chin Bick Wah brought it up.

Q. Say what she said.

A. She did say, she said Mr. Fong was being unreasonable and all he wanted her to do was just move right in into his house. And then she went on to say: "Where does he expect me to live, he doesn't have a house for me or an apartment or anything."

(Testimony of Jean Jow Yee.)

A. At 1544 Powell Street.

Q. Now during the period immediately following Chin Bick Wah's arrival in the United States do you recall having any conversations with Chin Bick Wah?

A. What period of time do you mean?

Q. Right after her arrival in the United States do you recall ever having any conversations with Chin Bick Wah?

A. Well, I had numerous conversations with her on several [442] times.

Q. Where did they take place?

A. Several times she came to my home.

Q. Do you recall the first occasion she came to your home after her arrival? A. Yes.

Q. About how long after her arrival was that?

A. About three weeks to a month that she came with her aunt, Chan Jueng.

Q. Was anybody else present at that conversation besides you, Chan Jueng and Chin Bick Wah?

A. No, that first one there was just the three of us.

Q. That took place at your apartment?

A. Yes.

Q. Now can you tell us what was said?

A. Mainly she came to——

Q. No, just say what she said as you recall, Mrs. Yee.

A. She said she came over to tell me how grateful she was that I stepped aside to give her a chance

(Testimony of Jean Jow Yee.)

to come over to the United States, and that she was very grateful.

Q. No, just say what she said.

A. She said she was very appreciative of the fact.

Q. Was that conversation in Chinese or English? A. In Chinese.

Q. Now, did you have another conversation on that same [443] subject with Chin Bick Wah?

A. At another occasion, yes.

Q. Yes. About how long after this first conversation you have just described did the next one occur, if you know?

A. Possibly three weeks later, or a month.

Q. Where did that take place?

A. Also at my home.

Q. Who was present at that conversation?

A. On this occasion I believe Mr. Fong brought her and she came to the house and we chatted for quite a while, and then she was to call him on the phone and tell him to pick her up.

Q. In other words, he had brought her and departed?

A. Yes, he had brought her and departed. It was during a week day, of course he had business to attend to.

Q. About what time of day was that, during business hours or in the evening?

A. No, it was in the afternoon, say about two o'clock.

Q. I take it you were not employed at that time,

(Testimony of Jean Jow Yee.)

A. Yes, we had a few.

Q. Did you have a conversation with Mr. Levy just before your baby was born regarding that subject? A. No.

Q. Do you recall any conversation with Mr. Levy and Mr. Fong in that summer of 1952?

A. No, I had conversations with them much earlier.

Q. Well, when, on the subject of any arguments? A. December of 1951.

Q. While Jonathan was in Hong Kong?

A. Yes, while he was in Hong Kong.

Q. In this December, 1951, conversation with Mr. Levy on that subject, where did it take place?

A. Well, it took place at the milk store.

Q. And who was present?

A. Mr. Levy, Mr. Fong and myself.

Q. About what time of day did that take place?

A. That was in the evening, possibly about nine o'clock or a little after.

Q. What was said?

A. Well, Mr. Fong, was saying that Jonathan was—he was speaking of Jonathan's behavior. [449]

Q. What did he say about it?

A. Well, he said that Jonathan was in Hong Kong having a good time and here you are suffering here in the States.

Q. What was he referring to then?

A. Well, I was quite ill at that time.

Q. With your pregnancy? A. Yes.

(Testimony of Jean Jow Yee.)

Q. All right, what else did Mr. Fong say on that subject?

A. And he said that, in other words, he says I know that he, I don't know what he intends to do, say, after he comes back to the United States and after he finishes the job of bringing Chin Bick Wah over.

But, he says, but if anything should happen, I feel that I am responsible and to the fact, he said, that he would see to it that I, that I would be supported.

Q. What did Mr. Levy say, if anything?

A. Mr. Levy said that we had all talked about this agreement so many times previous and that Jonathan should be man enough to go through with what we had orginally agreed.

Q. Were you crying at that conversation?

A. I believe so.

Q. In that conversation did you say anything about being unhappy? A. Yes, I was.

Q. What did you say? [450]

A. I was in quite a despondent mood.

Q. What did you say?

A. So I guess as the conversation went on then I said, well, I would just as soon end it all, and then they consoled me and told me——

Q. Who said what?

A. Mr. Fong and Mr. Levy both said that was not the way to look at it and if things did not turn out right they wouldn't have to worry about the

(Testimony of Jean Jow Yee.)

support of the children, Mr. Fong said he would take care of that.

Q. Now, when you say they took you home, did you ride in someone's car? A. Yes.

Q. Was it in Mr. Levy's car?

A. I am quite sure it was.

Q. Now in the summer of 1951 after Chin Bick Wah arrived, did you have another conversation with Mr. Levy regarding support of the children?

A. Yes.

Q. About when did that take place, if you can recall?

A. Well, there was a previous conversation right after the divorce.

Q. On the subject of custody?

A. Not exactly custody, but the—no, it was the division of community property. [451]

Q. Mrs. Yee, yesterday you described that in your testimony regarding a conversation on that subject. Was there another conversation in 1952 on that same subject?

A. Yes. That was sometime in June or July of 1952.

Q. That that subject was discussed?

A. Yes.

Q. Where? A. At the milk store.

Q. Who was present?

A. That was just Mr. Levy, Mr. Fong and myself. Mr. Levy——

Q. What was said?

A. Mr. Levy said he would be glad to draw up

(Testimony of Jean Jow Yee.)

papers so that Jonathan would be responsible for the support of the children.

Q. What else did he say about that, if anything?

A. No, he said for me to be patient and in time Chin Bick Wah would well, after residence in Reno, go through with the divorce and there will be no expenses involved on my part or on Jonathan's part, that Mr. Fong would take care of it all.

Q. What did Mr. Fong say?

A. Mr. Fong said that was so.

Q. Now, did you talk anything more in that conversation about that subject?

A. No, we did not. Somehow or other that paper about custody of children never—well, we never had to do it.

Q. It wasn't done at that time? [452]

A. It was not done at that time.

Q. Now, at a later time did you talk with Mr. Levy again about that question of an agreement, of a written agreement?

A. No, we did not talk.

Q. Did you see another lawyer about it?

A. I did not see another lawyer, Jonathan did, yes, Mr. Samuel Yee.

Q. About when was that?

A. That was in July of 1952.

Q. Now, were you given a paper to sign around that time?

A. Well, truthfully I didn't know anything about it. Jonathan just told me.

(Testimony of Jean Jow Yee.)

Q. Just describe whether or not you were given such a paper at a later time? A. Yes.

Q. Whether you saw such a paper?

A. Yes.

Q. Did you ever show that paper to Mr. Levy?

A. Yes, I did.

Q. Where did you show that paper to him, what place?

A. I did not show it directly to Mr. Levy.

Mr. Burns: Then we move to strike out the previous answer.

Q. (By Mr. Schnake): Can you tell me what you did——

The Court: It may go out. [453]

Q. (By Mr. Schnake, continuing): ——with the paper with Mr. Levy?

A. I mentioned to Mr. Fong that there was such a paper.

Q. Where did you have that conversation?

A. At the milk store.

Q. About when? A. August of 1952.

Q. Was it before Jonathan went to Seattle?

A. After.

Q. Who else was present besides Mr. Fong, if anyone?

A. There was no one present at that time.

Q. What did you say to Mr. Fong or what did he say to you about this paper?

A. He asked me if I had signed anything recently regarding the children, and I said yes, I had.

(Testimony of Jean Jow Yee.)

at the office of Samuel Yee. And he said, "Where is that paper?"

So I said, "I have it." So I gave it to him.

So he says, well, let me show this to Bob, meaning Bob Levy and he can tell us how binding it is or if it isn't binding at all.

Q. From whom did you later receive that document back? A. From Mr. Levy.

Q. Where did he give you the document?

A. He brought it to my home.

Q. At 1544 Powell? [454]

A. Yes, that's right.

Q. About how long after you gave it to Mr. Fong did Mr. Levy return it?

A. Close to a week.

Q. Did you have any conversation with Mr. Levy when he returned the document to you?

A. Just a short conversation.

Q. Who was there?

A. Just myself and Mr. Levy. He brought it to the door.

Q. Tell me what he said?

A. He brought it to the door and then he said, "I'm afraid this is a very binding document and there isn't anything we can do about it," and that was all he said. And then he left.

Q. All right. You recall on August of 1952 when Jonathan went to Seattle? A. Yes.

Q. Now, during the time that he was gone before you went to Seattle, did you have a conversation with Mr. Fong regarding that subject?

(Testimony of Jean Jow Yee.)

Let me ask the question this way: Did you ever have a conversation with Mr. Fong regarding this Seattle episode?

A. After they left for Seattle or before?

Q. Well, at any time around that period of time. Describe, or tell me the first conversation that you had with Mr. Fong on that subject. [455]

A. You mean about the Seattle trip?

Q. Well, or about the disappearance of Jonathan.

A. Well, Jonathan left. The last I saw of him was on a Monday afternoon where I was at work. He came with my daughter and told me that he was leaving town for a few days to go to work, and he says I will see you Sunday, and that was all. And I didn't think anything of it. It wasn't until the following day that Mr. Fong came over.

I had gotten home from work just about possibly five or ten minutes and the phone—no, Mr. Fong was on the phone first to call me and asked me what happened to Jonathan.

I said, well he left town for a few days, I understand to work. He took the little girl with him.

So then he says, "Well, I am coming right over."

Q. Did he?

A. Yes, he did; shortly after he showed up, and then he told me——

Q. Who was present when you talked to him, just you and Mr. Fong?

A. Just Mr. Fong and myself.

Q. At your home? A. Yes.

(Testimony of Jean Jow Yee.)

Q. All right.

A. He came over and he says, "Where did Jonathan go?"

I said, "I don't know." [456]

And so he says, "Well, well, do you know Chin Bick Wah left, too?"

I said, "No." I said, "When was that, when did you find out?"

And he said, earlier in the day when Chan Jueng phoned him and told him of it.

Q. Did you have any other conversation then with Mr. Fong regarding that subject?

A. Yes.

Q. What?

A. So then from my phone I called Chan Jueng over in Oakland so that she could verify the story that Chin Bick Wah left. And I did talk to Chan Jueng, and so right away she says what about the baby?

So I said, "Well, the baby is boarded out," to one of these licensed boarding homes for babies. I said I will call and find out.

So still in Mr. Fong's presence I called the place where the baby was boarded and that lady told me that the baby was gone early this morning, about seven o'clock.

So I just hung up and then we talked a little bit about, well, the possibility of where they could go.

Q. Who said that?

A. Well, Mr. Fong said, he asked me the possibility of where they could go. I said I didn't have

(Testimony of Jean Jow Yee.)

any idea, I thought [457] possibly Reno. So we just talked a little bit more on that, and then he said, "Well, what right did he have of the children?" I believe that was the first mention of the paper that was drawn up by Samuel Yee. So I showed it to him.

Q. That's when you showed the paper to Mr. Fong?

A. Yes, the first time, and he wanted to take it, but I don't believe I gave it to him then.

Q. Did you give it to him at a later date?

A. At a later time, yes.

Q. Now, did you then leave your own apartment for a period of time while Jonathan was gone?

A. Well, no, for a week or so—I mean, every day I would go to work and—just to keep my mind occupied.

Q. Just describe when you did leave, if at all?

A. Well, every week end I left to, I left town to go down to my mother's place.

Q. Where is that?

A. Menlo Park. And then, of course, Monday morning, I mean, I would come back and go to work and then—shall I go on?

Q. Describe what occurred with relation to this trip to Seattle now.

A. Well, then it was about, it was a Friday afternoon, possibly about two o'clock that I received a call from Seattle. The telephone operator, the place where I was working, said I have a call from Seattle. She kept telling me to take the [458]

(Testimony of Jean Jow Yee.)

phone, and I said no, I didn't know anyone in Seattle, I thought people were just joking with me.

Q. Did you talk with Jonathan?

A. Finally I talked to him and he told me that the little girl was very ill and if I could come right away.

Q. Did you go to Seattle? A. Yes.

Q. Did you talk with Mr. Fong about that, did you tell him you were going?

A. No, I did not. Well, after I hung up the phone, well, I thought I better see if I can get reservations on any plane. And so I talked to one of the secretaries in the office. She said she would try for me.

Q. Well, did you go to Seattle then?

A. Yes. Before I left though—shall I?

Q. Did you have a conversation with Mr. Fong before you left or not?

A. No, I didn't before I left. Before I left I felt it best to let someone know where I had gone to.

Q. Who did you inform?

A. I informed my sister May.

Q. Your sister May Jow?

A. Yes. And I also called Yee Shee. I informed my sister May that I was going to Seattle on an emergency, I said I didn't know what was happening, what was going on, I couldn't [459] hear very much over the phone.

Q. Did you talk to Yee Shee about this?

A. No, when I called Yee Shee I told her I would be down in the country for the week end and

(Testimony of Jean Jow Yee.)

I couldn't talk long to her because I was catching the train. That is what I told her.

And so I said if she should be looking for me I will be away for the week end, and that was all.

Q. Then did you go up to Seattle by airplane?

A. Yes, I did. I left on the 8:00 o'clock plane that night.

Q. Did you see Chin Bick Wah and Jonathan Yee in Seattle?

A. Yes, when I arrived in Seattle it was close to midnight and couldn't find my way around, and finally between the airport bus and the taxi they directed me to the address.

Q. Just describe your conversation with Chin Bick Wah, or rather Jonathan Yee in Chin Bick Wah's presence, if you can?

A. Well, when I first got there, well, Jonathan was expecting me. So, well, he came downstairs and took my suitcase upstairs and Chin Bick Wah was standing right in the doorway. And she said, she said to Jonathan that Jean can't come in here.

And so Jonathan says, "Why not?"

So Chin Bick Wah says, "I won't let her." Or words to that effect. She just stood in the doorway. So Jonathan gave her a push to one side and then I went in.

Q. Now, did you have a conversation with Jonathan in Chin [460] Bick Wah's presence then?

A. Yes. I was talking mostly to him, asking him, well, why did he have to do something like that,

(Testimony of Jean Jow Yee.)

just disappear with her and take the children, because the baby was two months old and here it was, the little girl very ill and he said that he was being nagged from all sides, so he decided that was the only way out, and the nagging also came from Chin Bick Wah, saying she would never go through with just living with Bill Fong, I mean, she said she would rather die first than to live under the same roof with him.

Q. Did Jonathan say that in Chin Bick Wah's presence?

A. Yes, he described everything to me, and she was just weeping.

The Court: I believe this will be a convenient place to take a recess.

(Short recess.)

Q. (By Mr. Schnake): Mrs. Yee, did you return from Seattle with your husband, Jonathan Yee? A. Yes.

Q. Who was in the car?

A. Chin Bick Wah, Jonathan, myself and the two children.

Q. Where did you go when you got back here, what place?

A. We came back to my place, 1544 Powell Street, San Francisco.

Q. As soon as you got there do you recall a telephone call [461] being made? A. Yes.

Q. Who placed that telephone call?

A. As soon as we came in the house I was going

(Testimony of Jean Jow Yee.)

to make a phone call, going to make a phone call, but Chin Bick Wah says, "I have to make a phone call." She said to some relative.

I said go ahead. So I thought it would be a short conversation, I was standing there waiting for her to get off the phone and then I would make a phone call.

Q. Standing right by her?

A. I was standing right there, yes.

Q. Go ahead, tell us what she said.

A. She made the phone call, not using any names or anything, she just spoke into the phone and said, "Did you get my letter" and evidently——

Q. Just say what she said.

A. She said that, get my letter, and after a pause she said, "Well, I'll see you later," and words to that effect, "I am in Portland." That is what she said, and then she hung up, and as soon as —shall I continue?

Q. Yes, go ahead.

A. As soon as——

Q. She said she was in Portland?

A. Yes. [462]

Mr. Davis: I object, your Honor.

Mr. Schnake: I didn't understand what the witness had said.

Q. Go ahead.

A. She said in the phone that she was in Portland and "I'll see you," to the party on the phone, and after that she hung up.

Q. Did you place a telephone call immediately?

(Testimony of Jean Jow Yee.)

A. As soon as she hung up I placed a telephone call to Mr. Fong at the milk store, and his first word to me was, "I just heard from Helen."

And I said, "I know." "So how did you know?"

I said, "I just brought her back," and he said, "You couldn't have because I just heard from her, she called me from Portland."

I said, "That is not so, because she is right here in my home." I says, "Why don't you come over?"

So he said okay.

Q. Did he appear very shortly thereafter?

A. About five minutes later he was at my door.

Q. Would you describe what occurred when he came inside the house?

A. Well, as soon as he arrived, Jonathan was still outside unloading the luggage from the car and I was in the house. So Jonathan and Mr. Fong had a few words and—oh, incidentally, Chin Bick Wah was still in the house. [463]

So then Mr. Fong came in and—well, as soon as he came in he more or less heaved a sigh of relief.

Q. Just describe what you saw or what you heard.

A. I saw this, I mean, he just acted like, well, he was glad everything was——

Q. Did he shrug his shoulders or something?

A. Like this. (Indicating.)

Q. You have described it. Now go ahead and say what was said or done.

A. Well, Chin Bick Wah was sitting down on a couch. Bill Fong walked over to her and said, "Why

(Testimony of Jean Jow Yee.)

did you have to do this to me, why did you have to run away?"

And so, well, Chin Bick Wah moved closer to him and started to sniffle a little bit, was crying on his shoulder a little bit and said, "I had no choice, he pointed a gun at me." He, referring to Jonathan.

And being that I was in the same room I heard what she said.

Q. Did you tell Jonathan about it?

A. Yes, because I had heard a different version.

Q. Well, just tell us what you said. Did you tell Jonathan about that? A. Yes.

Q. What did he do?

A. I told Jonathan as soon as he came in the house with more [464] luggage, and I told him what Chin Bick Wah said—no, I asked him in front of her and Mr. Fong and said she had just made the remark about him pointing a gun at her and forcing her to go in the car.

And so Jonathan said, "Repeat that," to Chin Bick Wah, he says, "Repeat that in front of me and in front of Mr. Fong and everybody."

So I says, "Yes, let's repeat it so we could all hear it once again." But she wouldn't say any more.

Q. What did she say or do?

A. She started to cry and Mr. Fong was patting her on the shoulder and he just said, "Well, let's not say any more about it."

And I said I would very much like to have it repeated so that all of us present could hear it again,

(Testimony of Jean Jow Yee.)

but we couldn't get any more out of her on that point.

Q. Well, just tell us what happened in the way of what you saw and heard then.

A. Well, so he was just consoling her.

Q. How did he do that?

A. Well, he patted her on the shoulder and she was crying on his shoulder.

Q. Then did he leave?

A. Well, after a little while a phone call came for him and that was from the milk store, and Gee King Yip called and said [465] that she was brewing some herb tea for him and it was ready and for him to come back and drink it.

Well, the distance from my place to the milk store, oh, it is possibly about eight blocks.

Q. Did he leave then, say he was going for that purpose?

A. Yes, he said he was going for that purpose.

Q. Now did you have any further conversation with Chin Bick Wah while he was gone, or was there any further conversation that you heard?

A. Yes, I heard them, I was not an active participant.

Q. What did you hear?

A. Well, I was in the other part of the room, but the dining room connects with the living room so I could hear, because—well, I could hear because it was open.

Q. All right, what did you hear?

A. So then Jonathan was unpacking the suit-

(Testimony of Jean Jow Yee.)

cases and all and Chin Bick Wah stopped her crying and she went over to John and said, "Well, why are you unpacking?"

And he says, "Well, I live here." He says, "I am going to stay here."

And she said, "What about me?"

He says, "Well, Bill Fong will, you know, take care of you or you could go back to the hotel in Oakland."

And she says, "No, I won't go." Chin Bick Wah says, "I won't go without you." [466]

So he says, "Well, I am staying here." And then she says, "Well, then I will stay here too." That is what I heard, and I says, "No, this is my home and you can't stay here." I said that to her.

So we had a few more words to that effect, and so Chin Bick Wah says, "Then you will have to rent me a room in a hotel, you have to go with me." She says, "I have no money, no funds to take care of myself and I don't get any from Bill Fong."

So and she said, "Besides," she says, "Legally, we are supposed to be married and you have to go where I go."

So this went on a little bit. It was an interval, say, of about a half hour and Mr. Fong came back again.

Q. When he returned was anyone with him?

A. Yes.

Q. Who?

A. He brought Chan Jeung, Chin Bick Wah's aunt.

(Testimony of Jean Jow Yee.)

Q. That Chan Jueng, is Chan the same family name as Chin?

A. Yes, it is just a different dialect. So shall I continue?

Q. What happened when William Fong and Chan Jueng appeared?

A. As soon as they came in the house, well, Chan Jueng's words were, "Why did you have to run away and leave us wondering?"

So Chin Bick Wah didn't say very much, she just started to sniffle and cry some more. And so then Chan Jueng also [467] spoke to Jonathan a few harsh words, said, you know, "Well, you didn't have to run away in the middle of the night or early dawn like that and disappear."

Well, more of that same kind of conversation happened. And then after a little while I told them, well, instead of all this argument and hustling I didn't want Chin Bick Wah staying in my house and I told them, well, what are you going to do about it?

So Chan Jueng says, "Well, naturally she is going back to Oakland with me."

And Mr. Fong says, "Yes, we'll take care of it. We'll take her back."

And then Chin Bick Wah says, no, she wasn't going and I told her definitely she couldn't stay a[illegible] so then Chan Jueng just went about moving her suitcases to one side.

Q. Whose suitcases? [468]

A. Chin Bick Wah's suitcases to one side and

(Testimony of Jean Jow Yee.)

kept asking her which are her things, and so reluctantly she said——

Q. Just describe——

A. She said, she pointed out which was hers and which wasn't, and then Mr. Fong helped take them out to the car. And then in the meanwhile, while he was taking the things out to the car, Chin Bick Wah was—rather, Chan Jueng was, well, speaking harsh words to Chin Bick Wah, saying that she was causing all this trouble, that after all she came to the United States with the understanding that she was to belong to Bill Fong, and then she had to pull a fast deal like this and disappear.

Q. What did Chin Bick Wah say, if anything?

A. She didn't say very much then, she just kind of cried and, well, they said more words which some I couldn't quite hear, but it was all relating to the same subject.

Q. After that did she leave?

A. Yes, and shortly after that—no, she, Chin Bick Wah, didn't want to go.

Q. Say what she said.

A. She said, no, she wasn't leaving with them, that she was going to a hotel. And so Chan Jueng said to Jonathan, "What are your plans?" Jonathan said, "I am staying here. This is my home."

So Chin Bick Wah said, "Well, you have to take me to a hotel some place, but I'm not going back to Oakland." [469]

And more words of the same followed, and finally

(Testimony of Jean Jow Yee.)

Chan Jueng said, well, "The thing to do, Jonathan, is that you took her out of my place from Oakland, the least you can do is to bring her back to Oakland."

In other words, you took her away from my home, the least you can do is to deposit her on my doorstep. And Jonathan said, "No, I don't have time." So he says, "I will gladly call a taxi and they could do the same thing," but Chin Bick Wah says, "No, that won't do."

So Mr. Fong says, "Well, I will be glad to take her anywhere she wanted to go."

So finally they have a few more words together and she left with them.

Q. With whom?

A. So Chin Bick Wah, Chan Jueng and Mr. Fong left with Chin Bick Wah's luggage.

Q. From that day to this where has Jonathan Yee lived?

A. 1544 Powell Street and 218 Hale Street.

Q. And at those two addresses with whom has he lived? A. Me.

Q. In the period of time from March, or rather from February, when he returned from Hong Kong up to this Seattle episode you have just described, where was Jonathan Yee living?

A. Same place where I was.

Q. 1544 Powell Street? [470]

A. 1544 Powell and Hale Street.

Q. Were there any trips that he made in con-

nection with jobs in the summer of 1952 where he stayed overnight?

A. Yes, he was working in Maxwell, Maxwell, California, I believe, on a carpenter job.

Q. All right. With the exception of those out-of-town trips—how long did they last, incidentally?

A. The trips?

Q. The out-of-town work.

A. Well, at the most a couple of days.

Q. While he was in Seattle were there any of his personal possessions or clothing at your place?

A. There were a few things, yes.

Q. Now, in September of 1952, did you and Jonathan Yee go to the Bank of America and execute a promissory note? A. Yes.

Q. Is this Government's Exhibit No. 10 the promissory note? A. That's right.

Q. Is that your signature on it?

A. Yes.

Q. Did you each inform the bank that your address was 1544 Powell Street? A. Yes.

Q. Speaking of that address, can you tell me what address you put on the birth certificate of your child Jeffrey that was [471] born in June of 1952? A. 1544 Powell Street.

Q. Did you list that address for yourself?

A. Yes.

Q. What address did you list for the father of the child? A. The same.

Q. What name did you put for the father?

A. Jonathan Yee.

(Testimony of Jean Jow Yee.)

Q. Now, did you have any conversation with William Fong or Yee Shee after that in 1952 that you can recall? A. After the Seattle?

Q. After the Seattle episode about this matter.

A. Well, just about a day or two after the—no, the next day after the Seattle episode, Chin Bick Wah called up several times.

Q. At your home?

A. Yes. Well, she asked Jonathan, she told Jonathan she was very ill.

Q. Did you hear that conversation on the extension?

A. We didn't have an extension, but I was there because he motioned to me, he whispered to me that Chin Bick Wah was calling and so I just listened to see what she had to say. And she said she was ill and that she did n't have any money to buy prescription pills and all, and that Bilil Fong didn't give her any and so it was up to John to give it to her. [472]

So he said that "I can't afford to give it to you because my child was very sick" and—shall I continue?

Q. Yes. Did you have any conversation with Yee Shee regarding this matter of the bringing of Chin Bick Wah to this country and the subsequent investigation in 1955? A. Yes.

Q. After the Government investigators talked to you and your husband? A. 1955——

Q. Just last year? A. Yes.

Q. What did you talk to Yee Shee about that?

(Testimony of Jean Jow Yee.)

A. Well, once in '55 she came to my home with a nephew of hers.

Q. Were those the three people who were in the conversation?

A. Well, I was home with my children and she came with her nephew.

Q. When was that in 1955, if you can recall, how long after the Government agents first talked to you?

A. Well, that was close to Christmas, I believe; it was close to Christmas, in December some time.

Q. Would you describe the conversation with Yee Shee?

Mr. Burns: Well, first of all, I object to the form of the question. The witness shouldn't be permitted to describe a conversation; likewise object on behalf of the Defendant Levy [473] that this conversation is not binding him, being long after the period of the termination of the alleged conspiracy that is set forth in the indictment.

The Court: Objection may be overruled.

The Witness: Shall I continue?

Q. (By Mr. Schnake): I mean state the conversation; I don't mean describe it.

A. Well, Yee Shee came to my house and said **that if the Government investigators should come** to the house, to deny the fact that Jonathan was her nephew, her real nephew, blood relation, just to say that they were of the same family clan and also that **if they should question about William Fong and**

(Testimony of Jean Jow Yee.)

Chin Bick Wah, to do as much covering up as we can, because we were involved.

Q. Now, do you recall April 4, 1956?

A. Very well.

Q. Was this just prior to the time that Jonathan Yee was to appear before the Grand Jury?

A. Yes.

Q. Did you receive a telephone call about 1:30 that day? A. That's right.

Q. From whom?

A. I received a telephone call from Ruby Yee.

Q. Who is that?

A. Sister of Mr. Fong, and she stated—— [474]

Mr. Burns: Pardon me. I am going to object, your Honor——

Mr. Schnake: This is preliminary, your Honor.

Mr. Burns: She started to say she stated, I believe.

Mr. Schnake: Yes, the statement here is preliminary to an occurrence and act, your Honor. It is to set the time of an occurrence.

Mr. Burns: Your Honor has heretofore ruled out a conversation insofar as the Defendant Levy is concerned, your Honor, please, the same conversation.

The Court: This is on April 4?

Mr. Schnake: On April 4. Your Honor, this is preliminary to an act and this by Ruby, one of the named co-conspirators, and it is to set the time of one of the overt acts. In fact, this is one of the overt

(Testimony of Jean Jow Yee.)

acts alleged in the conspiracy and it is to set a time of the second overt act alleged in the conspiracy.

The Court: Well, go ahead and ask about it. I don't know what it is.

Q. (By Mr. Schnake): Go ahead. Would you state what was said?

Mr. Burns: We are making an objection to the conversation on behalf of the Defendant Levy that it is outside the scope of the indictment and the alleged conspiracy, being April 4, only 7 days before the indictment was returned in this case, after the termination of the conspiracy.

The Court: Well, it is admitted for the same purpose as [475] the other statements, at or about that time that were made, for the purpose of showing, if it does show, the existence of a conspiracy.

The Witness: Shall I continue?

Q. (By Mr. Schnake): Yes.

A. Yes, Ruby Fong called me on the telephone and said that she was bringing her mother, Yee Shee, over to see me some time that afternoon. I said that I had to do a little bit of grocery shopping and for her to state a time when she would be here so I would be at home.

So she asked what time was convenient. I said possibly 3:00 o'clock and so she agreed to the time. And I said to her, "Are your coming and do you know the way?", and she said yes, "Either will bring her or my brother." In this case she meant, she referred to a younger brother.

(Testimony of Jean Jow Yee.)

The Court: Mr. Schnake, this is all so very unimportant, let's get on to something else.

Mr. Schnake: All right.

Q. At 3:00 o'clock did someone appear at your home?

A. At 3:10 on the same—April 4, Mr. Fong and Yee Shee came to my house.

Q. Who do you mean by Mr. Fong?

A. Mr. William Fong came to my house.

Q. Did you have a conversation with William Fong? A. Yes. [476]

Q. Who was present in the room?

A. That was Yee Shee, Mr. Fong and myself.

Q. Would you state what was said?

Mr. Burns: On behalf of Defendant Levy I make the same objection heretofore made your, Honor.

Mr. Schnake: Your Honor, we have the memorandum of law which we just finished this morning.

The Court: It is too late to give it to me now, counsel. The objection may be overruled. I don't want to see it. I should have had it before.

Mr. Schnake: We were just able to finish it a few minutes ago, your Honor, and I would like to file it at this time relating to some other matter that will come up.

The Court: The objection is overruled.

The Witness: Shall I continue?

Q. (By Mr. Schnake): Yes. Would you state what the conversation was as best you can recall?

(Testimony of Jean Jow Yee.)

A. I said to Mr. Fong, how is it that he had so much free time to come over and visit, and Yee Shee said, "This is an important matter. It's about the immigration matter." And so right away Mr. Fong said, "Yes, it's very important, because Vivian called me."

Q. Vivian who?

A. Vivian Fong, the daughter of Mr. William Fong, "Called me and told me that you and Johnny confessed to everything [477] when the Immigration investigators interrogated you."

And I said words to the effect that what did they say, what did she say, and so Mr. Fong says, "Well, there were pictures, several, four pictures, two small ones and two large ones, which you gave to them, and they showed them to Vivian, I believe."

Q. That is what Mr. Fong said?

A. Yes, "You showed them to Vivian."

I didn't show them to Vivian but the investigators showed them to Vivian, and she said that was the scene at the airport where you have on exhibit here.

Q. Those the pictures I showed you earlier?

A. Yes, those pictures, yes.

Q. What did he say about those pictures?

A. Mr. Fong say?

Q. Yes.

A. Mr. Fong says, "Well, did you give them the pictures?" to me, and I said, "No, I didn't." But I didn't add that I gave the negatives. I didn't have a copy of the pictures.

(Testimony of Jean Jow Yee.)

Q. Now, can you relate what was next said after the discussion about the pictures? Was there anything else said about the pictures before you go on?

A. Yes, Vivian, Mr. Fong says that Vivian said the investigators told her also that I was supposed to have said it, the fact that we really had a phony divorce and I was seeing [478] Jonathan off at the airport and there was no hard feelings it was supposed to show.

Q. Then what was said next, if you can recall? Anything else further about Vivian?

A. I don't quite recall what else was said in reference to Vivian. At that point, you mean?

Q. Well, whatever you can recall of the conversation.

A. What Mr. Fong said, or Vivian?

Q. No, what Mr. Fong said next, if anything.

A. Mr. Fong said, well, the important issue of the day, of his visit, rather, was that he was there to tell me to deny everything if the Immigration investigators should come and question me some more. And he said that if I wasn't sure about any of the facts of the case, to see, go and see Mr. Jackson who I believe at that time was his lawyer, 580 Washington Street, Room 301. And for me definitely to make an appointment and see him as soon as I can, and then Mr. Jackson will explain everything to me point by point, and, well, I hesitated.

Q. You just say what you said.

A. Oh, well, I didn't exactly give him an answer then, but he further stated that if any of this would

(Testimony of Jean Jow Yee.)

come out, well, there would be too many people involved. First, there would be himself involved, and he said Mr. Levy would be involved, because Mr. Levy was the legal advisor of this whole [479] thing, and his mother would be involved because——

Mr. Burns: Pardon me, is that Mr. Levy's mother?

The Witness: No. Mr. Fong's mother, because she bought the paper for Jonathan to come over; Helen, that is, referring to Chin Bick Wah, would be involved; and I would be involved, because I had agreed to a phony divorce. And he stated the fact that we were all involved in a conspiracy against the Federal Government.

Also he stated that what I should do is to deny everything, and then he says if you deny everything, if Helen denies everything, John denies everything, and Levy denies everything, then there will be about five against one and they would have no case.

Q. Did he say who the one was?

A. He didn't exactly say who the one was.

Q. Did he mention anybody else at that time?

A. He was referring—he was referring to the investigator.

Q. I see. At that conference can you relate anything else that occurred?

A. Yes. Well, he stated the fact that he was interrogated by investigators and that Mr. Levy was

(Testimony of Jean Jow Yee.)

interrogated and that Mr. Levy was very mad at me for bringing his name in here into this picture. I said, well Mr. Levy was involved, because he advised us of all this and I said at the time, if you recall, I wanted no part of this, but finally it came to agreement that [480] everybody went along, so I did, too, and even Mr. Levy reassured me everything would be all right.

Q. What did Mr. Fong say to that?

A. Mr. Fong says, well, if you don't admit anything, they just can't do anything about it. But he says if you do, well, think of all the people involved, and again he mentions——

Q. Did he say what would happen?

A. Yes, he did.

Q. What did he say?

A. He said that what would happen was that if all this should come out, well, then he would, Mr. Fong himself would get a year in jail and a fine; Jonathan would get deported; Mr. Levy would lose his license and ruin his whole life; and he says, actually Helen, meaning Chin Bick Wah, would get off the lightest, she would just be deported, and that after one year can come back into the country.

Well, he says, as far as it goes, I could do the same thing and bring Jonathan back in the country, but I would not be, I wouldn't be free of it, because I had agreed to the phony divorce and there was conspiracy involved, so I would probably get 60 days in jail, and he also asked a question, "Who would feed your kids?"

(Testimony of Jean Jow Yee.)

Q. Was there anything in this conversation about any period of time? A. Yes. [481]

Q. What?

A. I said—now, I also asked him a question, I said, supposing, you know, supposing, say, suppose someone turns State's witness, what would happen. Again he told me the penalties for each one and then I said, well, if that was the case, then how long would, how long would this last. And he says five years from the time Helen came, meaning Chin Bick Wah, and I said it wasn't worth it, because after all what did Helen, Chin Bick Wah, do for me that I had to lie for her.

So he said, you are not lying for Helen alone, you are lying for Ma, meaning Yee Shee, for Jonathan, for Bill Fong himself, for Levy, and for myself.

Q. Now, was there any conversation as to how this had all gotten started?

A. Yes, I said no doubt that it started from Helen, from Chin Bick Wah and the divorce and different things like that, and he says no, there was a refugee paper investigation regarding Jonathan's entry, and so he says that is how it had started, he says, but, well, anyway, that is not so important; the fact that if I would go to see Mr. Jackson with Jonathan, Mr. Jackson would explain everything and anything I wasn't clear on he would clear it up for me, and for me to go as soon as possible. And he says if you could go tomorrow, that would be good. And Mr. Fong says he would pay the bill,

(Testimony of Jean Jow Yee.)

whatever costs it was in connection with [482] the lawyer.

Q. Was there any conversation regarding someone named Ah Loy or Ah Loy's mother?

A. Yes, he said that probably most of this investigation came——

Q. Who said that, Mrs. Yee?

A. Mr. Fo g said that, no doubt it came from Ah Loy, meaning Vivian.

Q. Is Ah Loy another name that Vivian Fong has? A. Yes, Chinese name for Vivian.

Q. Incidentally, what does that term "Ah" mean in front of any of those names?

A. Just an expression.

Q. I see. A. In connection with a name.

Q. Is Jonathan sometimes called Ah Kee?

A. Yes.

Q. All right. What was said about that?

A. Oh, evidently, Mr. Fong said, evidently all this—no, the investigators went to question Vivian and Vivian's mother, Gee King Yip, and the expression he used was "just spilled her guts."

Q. He used that expression?

A. That is the expression he used. In other words, she told all she knew.

Q. Anything said about what you should say?

A. Yes. Well, then he continued on that if the investigators [483] came and asked me anything more on this, well, I was supposed to say, well, to tell them, well, deny all of this, and then to say, well, that's all I know and, well, I cannot be

(Testimony of Jean Jow Yee.)

bothered talking to you any more, words to that effect.

Q. Just toward the end of this conversation, did Yee Shee say anything?

A. Yes, she did, she said, well in the intervals she would say yes, but she was, well, quite elderly and she didn't want to spend the rest of her days in jail or be deported, and all she was concerned was that——

Q. What did she say?

A. She said—well, just tell them John, Jonathan is not my nephew, not a true blood relation, but just a member of the family clan.

Q. All right. Now, can you recall anything else in that conversation?

A. Well, his parting words were "Don't forget to call up and make an appointment to see Jackson."

Q. Now, on the following morning did you receive a telephone call? Excuse me, on the following evening did you receive a telephone call on April 5?

A. Yes.

Q. About what time?

A. I believe it was 10:00 or 10:30 in the evening.

Q. Who was that phone call from? [484]

A. It was from Yee Shee, and she was calling from Ruby Yee's house in Oakland.

Q. Did she say that?

A. Yes, she was——

Q. Who else talked on that phone conversation?

(Testimony of Jean Jow Yee.)

A. Mr. Fong. I understand the occasion was Ruby's son's birthday.

Q. Well, just say what was said. Now, who actually did the talking on the telephone after you first talked to Yee Shee?

A. Well, Jonathan did the talking.

Q. Were you listening on that telephone conversation?

A. Yes, because when I picked up the phone, I was on an extension and I just called to him and told him to pick up the phone.

Q. Did he pick up the other telephone?

A. He picked up the other phone.

Q. Did you continue to listen? A. Yes.

Q. All right.

A. Quite curious as to what was being said.

Q. Say what you heard between Mr. Fong and Jonathan Yee.

Mr. Burns: The same objection to this conversation.

The Court: Admitted solely for the purpose of proving, if it does prove, the existence of a conspiracy.

The Witness: Shall I continue? [485]

Q. (By Mr. Schnake): Go ahead.

A. He said this is quite a serious matter, and mainly again to see Mr. Jackson as soon as possible; in fact, go and see him, if you can, in the morning, say about 9:00, 9:30, otherwise go about 4:30, and that there were a lot of people involved in this case, and, well, for the good of everyone,

(Testimony of Jean Jow Yee.)

deny the fact that, deny the fact that—in other words, whatever the investigators asked; just deny that.

Q. Was there any conversation in that telephone conversation regarding Jonathan's relationship to Bill Fong?

A. Well, Yee Shee mentioned that fact.

Q. Did she, Yee Shee, get back on the telephone, then? A. Yes, she talked at first.

Q. Did you hear her conversation with John, also? A. Yes.

Q. What did she say to John?

A. She said that by all means deny the fact that he was a relation and that she was elderly and give her some respect.

Q. Now, after that conversation, did you have another conversation less than a half hour afterwards? A. Yes, there was.

Q. Who called you that time?

A. This time it was Yee Shee again.

Q. Incidentally, who placed these telephone calls? Did you place them or receive them? [486]

A. Receive them.

Q. All right. What did Yee Shee say?

Mr. Burns: Same objection to this conversation.

The Court: It's admitted for the same purpose.

The Witness: Go ahead?

Q. (By Mr. Schnake): Go ahead.

A. Again she repeated the facts, and also that she said—oh, can't I go back to that first conversation?

(Testimony of Jean Jow Yee.)

Q. You recall something else in the 10:30 conversation? A. Yes.

Q. All right. State it, please.

A. Yes, that Mr. Fong mentioned that his brother, Fong Kim Quon, known as Benton Fong, was to be called to the Grand Jury either on the following day or so, and whatever he had to say—in other words, whatever he had to say before the Grand Jury was without the benefit, no, without the —in other words, he had no counsel for his appearance at the Grand Jury, and so we mentioned that, and then he said, of course, we had to all more less talk this over and agree to matching testimony.

Q. All right. Now, this conversation at 11:00 o'clock, can you recall what was said in that conversation? Did you hear the opening conversation?

A. At 11:00 o'clock, I didn't hear that one. I don't believe I heard that one. [487]

Q. You knew there was one? A. Yes.

Q. The following morning at 5:30 in the morning, was there another telephone call?

A. Yes.

Q. Who was that from?

A. Yee Shee. And I heard that one because I got up to answer the phone at first.

Q. What did Yee Shee say?

A. She said that Benton Fong, Kim Quon——

Q. You say Kim Quon?

A. That is Benton Fong; was to appear before the Grand Jury at 3:00 o'clock that afternoon, and

(Testimony of Jean Jow Yee.)

if Jonathan could come over instead of going to work, to talk this thing over and match their testimony before Benton Fong's Grand Jury appearance so they would all have the same story to tell, and she said it was, well, it was quite important that he did show up even before breakfast, if he could, and have this meeting, because Benton Fong was, had the day off and he would be here real early.

Q. Was there any conversation about a picture?

A. Yes, there was a mention of the picture of Benton.

Q. What did she say?

A. She said that Benton Fong's wife was quite disturbed by the fact that we, that Jonathan and I brought Benton Fong's name into this, the whole thing; and, well, at the time I [488] couldn't think quite straight about it, but a little later on I did think of it and so I told her the fact that, how Benton Fong's name was mentioned, or Fong Kim Quon's name was mentioned, was the fact that he signed a paper when Jonathan went to Hong Kong and that was on record with the, I guess the Passport Division of the Immigration Department.

Q. Can you recall any other conversation at that time?

A. Well, she said that Benton Fong's wife was quite disturbed about the whole thing and that we shouldn't have brought his name into the picture and involve him in any way. And I felt I didn't want to be blamed for it and I told her——

(Testimony of Jean Jow Yee.)

Q. Say what you said.

A. I just told her that is what had happened.

Q. All right.

Mr. Schnake: That's all.

The Court: We will take a recess at this time until 1:30 this afternoon.

I might advise the Jury that if there are no unforeseen developments this afternoon, that for the purpose of permitting anyone who wants to go away for the week end tomorrow, our hours tomorrow will be a little different. We'll start at 9:30 in the morning and we can run through until 1:00 o'clock and we will then adjourn for the day tomorrow. I wanted you to know that today to make any plans that you might desire to make. We will start at 9:30 tomorrow, run till 1:00 o'clock and then we will adjourn for the day at that time. [489]

We will adjourn now until 1:30 this afternoon.

(Thereupon an adjournment was had until 1:30 p.m. of this date.) [489-A]

Afternoon Session—1:30 P.M.

The Court: The Jury is present; proceed.

JEAN JOW YEE

resumed, previously sworn:

Cross-Examination

By Mr. Burns:

Q. Mrs. Yee, where did you spend the lunch hour today? A. Clinton Cafeteria?

(Testimony of Jean Jow Yee.)

Q. With whom did you have lunch?

A. Mr. Prather.

Q. Mr. Prather, who is the Government agent?

A. Yes.

Q. And who else?

A. We were looking for a seat and then Mr. Cavanaugh came and told us to sit at their table.

Q. Who is Mr. Cavanaugh?

A. I am not sure, but I think he is from the State Department.

Q. Who else was present at the table?

Mr. Schnake: I will stipulate, counsel, this witness has had meals with Government agents, this noon and at other times.

Mr. Burns: I think I have a right to inquire.

The Court: Go ahead, counsel.

Q. (By Mr. Burns): Who else was present?

A. I believe his name is Mr. Spahn. [490]

Q. Who is he? A. I don't know.

Q. Was there anyone else present that you do know? A. No.

Q. After you finished lunch you returned to this building? A. Yes.

Q. Where did you go?

A. First I made a stop at the rest room.

Q. And after that?

A. To Mr. Schnake's office.

Q. In the United States Attorney's office, is that correct? A. Yes.

Q. Now, when you arrived at this building this morning, where did you first go?

(Testimony of Jean Jow Yee.)

A. To Mr. Schnake's office.

Q. Who was present?

A. Well, I arrived about 9:40 and I believe Mr. Moore was on the phone.

Q. How did you reach this building, Mrs. Yee?

A. I walked.

Q. From your home? A. No, no, by car.

Q. Whose car? A. My own car.

Q. Did you drive down? [491] A. Yes.

Q. Now, last night did you talk to anybody about your testimony of yesterday? A. No.

Q. Was your husband home last night?

A. Not at first.

Q. Well, did he come home last night?

A. Yes.

Q. Did you talk to him about your testimony?

A. Some parts of it.

Q. What parts?

A. I can't remember all of it, but I just mentioned a few parts. Shall I continue?

Q. Well, am I to understand you can't remember all of the parts you discussed with your husband last night?

A. The parts that I did mention very much was the fact that you kept getting up and objecting and that upset me quite a bit, and then you and Mr. Schnake would say a few words and then the Judge here would say a few words, and I completely forgot what the question or the answer was all about and I said that I had to have the secretary read the topic back to me.

(Testimony of Jean Jow Yee.)

Q. In other words, you forgot what you were supposed to say, is that right?

Mr. Schnake: I will object to that, your Honor. That is [492] argumentative, what you were supposed to say. She didn't say that.

The Court: It is cross-examination; he is asking her.

Mr. Schnake: I object that it is argumentative, your Honor.

Q. (By Mr. Burns): Now, prior to the time you took the stand yesterday, who did you talk to, if anyone?

A. Just prior to the stand I was in the witness room with Mr. Moore.

Q. You were likewise in the witness room with Mr. Schnake, weren't you?

A. No, he was in here and he stopped by just for a moment or two.

Q. Mrs. Yee, refreshing your recollection as to the events of yesterday, do you recall that there was a recess and that Mr. Schnake saw you in the witness room during that recess?

A. Just for a few moments, yes.

Q. For about ten minutes, is that right?

A. No, it wasn't that long.

Q. Did Mr. Schnake show you any statements you had made? A. No.

Q. Did he show you statements that other persons had made? A. No, not at that time.

Q. When is the last time he showed you any statements?

(Testimony of Jean Jow Yee.)

A. Well, referring to [493] what?

Q. To any written testimony or statement that you have seen prior to the time that you took the witness stand yesterday.

A. He didn't show me any statements of anyones.

Q. Did he show you the Grand Jury testimony that you gave before the Grand Jury here?

A. No, he did not.

Q. Did he have a conversation with you concerning your testimony before the Grand Jury?

A. No, he did not.

Q. Now, you did testify before the Grand Jury in this case, did you not? A. Yes, I did.

Q. On what date was that?

A. I believe it was April 9, 1956. I know it was a Wednesday.

Q. When were you born, Mrs. Yee?

A. July 22, 1921.

Q. And where? A. Alviso, California.

Q. What was your maiden name?

A. Jow.

Q. Jean Jow? A. Yes.

Q. Where did you go to school?

A. Grammar school?

Q. All of the schools. [494]

A. There was Central School in Menlo Park and high school in Redwood City.

Q. Is that the extent of your education?

A. Well, I went to evening school here in San Francisco, the Commerce.

(Testimony of Jean Jow Yee.)

Q. What was the nature of the course you took at evening school?

A. Business courses, refresher courses.

Q. What employment have you had?

A. I have had, well, clerical, office.

Q. By whom were you employed?

A. There was the West Sugar Refinery; there was a China Aircraft Company.

Q. When were you employed by the sugar refinery people? A. Either in 1941 or 1942.

Q. How long have you resided in San Francisco? A. Aoout 15 years.

Q. All of the time that you have resided in San Francisco, have you been employed?

A. Yes. Well, in the later years.

Q. Were you employed at the time that you got married? A. Yes.

Q. By whom? A. Hills Brothers Coffee.

Q. When did you get married? [495]

A. In 1947.

Q. What date?

Mr. Schnake: I object to this, your Honor. It is an indirect attempt to gain what has already been ruled out.

Mr. Burns: Testing her credibility. The date of marriage is a matter of record here.

The Court: You may ask the date of her marriage.

The Witness: Shall I go on?

Q. (By Mr. Burns): What day of the month

(Testimony of Jean Jow Yee.)

were you married? A. September 8th.

Q. And where? A. Reno, Nevada.

Q. How long had you known Jonathan Yee before you married him? A. About a year.

Q. Who introduced you to him, if anyone?

A. I believe it was Roger Lee.

Q. How many children have you?

A. Two.

Q. When was your first child born?

Mr. Schnake: I object to that, your Honor.

The Court: I will permit the answer.

The Witness: Shall I go on?

Q. (By Mr. Burns): Yes.

A. December, 1947.

Q. Do you recall the date? [496]

Mr. Schnake: I object to it, your Honor, as being an attempt to——

The Court: I will permit the answer.

The Witness: Shall I go on?

Q. (By Mr. Burns): Do you recall the day?

A. December 18th.

Q. 1947, is that correct? A. Yes.

Q. Isn't it a fact, Mrs. Yee, that prior to the time of your marriage to Mr. Yee that he told you that he didn't want to marry you?

Mr. Schnake: I object to that, your Honor. That doesn't test credibility of the witness; it is too remote.

The Court: Sustained.

Mr. Burns: Well, I would like to be heard but I won't take the time now on that point, your

(Testimony of Jean Jow Yee.)

Honor, if I may reserve the right to question the witness concerning this marriage.

Q. Now, after your marriage in 1947, Mrs. Yee, in September, it is a fact, is it not, that you and Jonathan had many quarrels? A. Yes.

Q. It is a fact, is it not, that you were extremely jealous of him?

Mr. Schnake: I object to that question, your Honor; it's indefinite and vague and calls for an opinion that can't very well be given. [497]

The Court: She may answer if she can.

A. Well, not more so than anyone else.

Q. (By Mr. Burns): Well, can you tell the ladies and gentlemen of the Jury this, Mrs. Yee: Jonathan gave you cause to be jealous, is that right?

Mr. Schnake: I object to that, your Honor, as being again indefinite, vague.

The Court: This is cross-examination, counsel.

Mr. Schnake: Very well.

The Court: The objection may be overruled.

A. At times.

Q. (By Mr. Burns): And at times, Mrs. Yee, he resorted to physical violence, didn't he?

A. Once.

Q. That was prior to the time he went to Reno, Nevada, wasn't it?

A. That was after he went to Reno, Nevada.

Q. Now, Mrs. Yee, when did your husband go to Reno? A. The first part of April, 1951.

(Testimony of Jean Jow Yee.)

Q. Isn't it a fact for some period of time prior to that time, that he told you he wanted to divorce you? A. No, he did not.

Q. Now, Mrs. Yee, how did he travel to Reno, Nevada?

A. Well, he made many trips—supposed to establish residence first—— [498]

Q. Let's get to the first one.

A. The first time he drove up.

Q. In whose car? A. Our car.

Q. Did you know he was leaving?

A. Yes.

Q. What time of the day did he leave?

A. Around noon time.

Q. On what day, do you recall?

A. I can't recall the exact date, but it's the first part of April, after he had received the letter of introduction from Mr. Levy.

Q. I will show you a letter which is a part of Government's Exhibit No. 3, and ask you if that is the letter to which you make reference.

A. Yes, sir.

Q. You say he left after the receipt of that letter, is that correct?

A. He had the letter in the pocket the day before or so and he left following that.

Q. As a matter of fact, he left the day after he got that letter and he got the letter on April 10, isn't that correct? A. I believe so.

Q. Now, did he show you that letter?

A. Yes. [499]

(Testimony of Jean Jow Yee.)

Q. Did he tell you that he had received that letter from Mr. Levy in Mr. Levy's office, didn't he?

A. He did not. He received it from Levy in Fong's store.

Q. Were you told that?

A. I was with him when he got the letter. It was just the evening before.

Q. Did you discuss with your husband what his testimony was concerning how he received that letter? A. No.

Q. Now, I will show you here Defendants' Exhibit C, Mrs. Yee, and ask you if you have seen the original of that. A. Yes, I have.

Q. Do you recognize your signature on it?

A. Yes, I do.

Q. I believe you testified on direct examination that Mr. Levy brought that to your apartment you signed it? A. Yes.

Q. Now, isn't it a fact——

A. (Interrupting): He was accompanied by Mr. Fong.

Q. Isn't it a fact, Mrs. Yee, that you didn't see Mr. Levy at the time you signed that, or at any other time around that time?

A. No, sir, I saw him; he brought it to me; he handed it to me.

Q. Isn't it a fact that Mr. Fong gave you that document? A. No, he did not. [500]

Q. Mr. Fong was alone?

(Testimony of Jean Jow Yee.)

A. No. He was not.

Q. When did you sign the document?

A. In the presence of——

Q. I said when. A. The day?

Q. Yes.

A. I don't recall the exact date, but it was the first part of May in 1951.

Q. The first part of May? A. Yes.

Q. Of 1951 And that is your best recollection?

A. Yes.

Q. And you're accurate that Mr. Levy brought it to your apartment and he was accompanied by—— A. Mr. Fong.

Q. Mr. Fong? A. Yes.

Q. Would you examine the document and look at it for dates? A. Now?

Q. Now. A. Yes.

Q. What date, if any, do you observe on it?

A. It is filed May 11 of 1951. Well, it says here 17th of April, 1951, in witness whereof, but I wasn't before a notary [501] public on this.

Q. We understand you were not before a notary public, Mrs. Yee, but the document does bear the notary's date of April 17, does it not?

A. Yes, but not in my presence.

Q. Now, Mrs. Yee, when Johnny returned from Reno, did he have occasion to discuss with you the testimony he gave in the District Court of Nevada concerning—— A. No.

Q. ——the grounds of divorce from you?

A. No. We had that discussed before he left.

Q. And have you since that date been shown any

(Testimony of Jean Jow Yee.)

documents by the Government concerning that testimony?

A. I might have been once just to see if that was my signature.

Q. I am talking about the transcript of the testimony of your husband in court in Reno, Nevada.

Mr. Schnake: May I ask that the witness be shown any documents she is being questioned regarding?

The Court: No, she may be asked this question, counsel.

Mr. Schnake: All right.

Q. (By Mr. Burns): Do you understand my question? A. No, I don't.

Mr. Burns: Could I have the question read?

The Court: Read it.

(Record read.) [502]

The Court: Do you understand the question?

The Witness: Yes.

The Court: The last does not appear to be a complete question.

Mr. Burns: I will reframe it, your Honor.

Q. During the course of your several discussions with the agents and attorneys for the Government, did they ever show you or tell you of the testimony that Johnny gave in Reno, Nevada, at the time he divorced you? A. No.

Q. Now, you testified on your direct examination when you were shown the passport file of Jonathan Yee, that you participated in the preparation

(Testimony of Jean Jow Yee.)

of certain letters that are contained in that file; do you recall that testimony? A. Yes, sir.

Q. I believe you testified that there were certain telegrams likewise? A. Yes.

Q. Do you recall that testimony?

A. Yes, sir.

Q. I believe you testified that Mr. Levy suggested that it would be a good thing to send the telegram? A. Yes, sir.

Q. Now, you know and you knew then, Mrs. Yee, in 1951, did you not, that Mr. Levy is not an immigration attorney? [503]

A. I did not know for sure.

Q. When is the first time you learned of the name of Jackson and Hertogs?

A. When Jonathan filed for the passport application and the only—I just heard it; I had never met the man or either of the men.

Q. It's a fact, is it not, Mrs. Yee, that Jonathan had told you that the passport application matters were being handled by that law firm, did he not?

A. No, Jonathan didn't tell me; Mr. Fong told me.

Q. Mr. Fong told you, and he told you that in May of 1951, didn't he? A. Yes, in 1951.

Mr. Schnake: Could I have that question read back? I didn't understand whether Mr. Burns was asking about the passport or the visa. I didn't hear it.

Mr. Burns: Passport.

(Testimony of Jean Jow Yee.)

The Court: Read the question. Read it, Mr. Reporter.

(Record read by the reporter.)

Q. (By Mr. Burns): Mr. Fong told you, is that correct? A. Yes, sir.

Q. That was in May of 1951? A. Yes.

Q. After Jonathan had returned from Reno?

A. Yes. [504]

Q. Did you have occasion——

A. (Interrupting): That was filed for application passport the day after the divorce was final.

Q. That was the divorce that was final on May 11, 1951? A. Yes.

Q. It is your testimony that you didn't know that Mr. Levy was not an immigration attorney?

A. I did not know that.

Q. It is likewise your testimony that Johnny did not tell you anything about Jackson and Hertogs?

A. I said he mentioned Jackson—well, maybe Mr. Jackson being down there with Mr. Fong, he went down to Mr. Jackson's office with Mr. Fong and they filled out the necessary papers, and they also went some place, somewhere near the Civic Center for more papers, that was all.

Q. Now, Mrs. Yee, you have testified concerning a number of conversations with a number of different people. Now, when did you first see Mr. Levy? A. I would say about 1948.

Q. Had you ever seen him in the store prior to the time you married Johnny?

A. Yes, I had, but I never was directly introduced to him.

Q. But you saw him? A. Yes.

Q. You were told he was Mr. Fong's attorney, is that correct? [505]

A. Well, I was told that he was a personal friend of Mr. Fong.

Q. Did you know that he was an attorney?

A. Yes, there was mention of that.

Q. Was there mention of the fact that he did legal work for Mr. Fong?

A. Yes, there was mention of that, also.

Q. That was prior to the time you met him, is that correct?

A. You mean meeting Mr. Levy?

Q. That is correct. A. Yes.

Q. Now, you got married in 1947, is that right?

A. Yes.

Q. You say the first time you met Mr. Levy was in 1948? A. Yes.

Q. Now, had your husband asked you for a divorce prior to the time you met Mr. Levy?

A. No.

Q. When is the first time your husband asked you for a divorce?

A. Well, there was no mention of a real divorce until finally the talk about the latter part of 1950.

Q. Mrs. Yee, Johnny had left you several times, had he not? A. No.

Q. He had never separated from you?

A. You mean, like occasionally a day or two out

of town or [506] going to work or something like that?

Q. No. As a consequence of some quarrel, dispute that you and he had had, he would stay away all night, isn't that true?

A. No, not prior to the divorce, unless you call him establishing residence in Reno.

Q. I am talking about during the year 1950.

A. No.

Q. Now, I believe you testified that you saw Mr. Levy rather frequently in the store on Stockton Street, is that correct? A. That's right, yes.

Q. Now, have you ever been to Mr. Levy's office?

A. I can vaguely remember once.

Q. When was that?

A. I believe when Jonathan was in Hong Kong.

Q. Where was his office?

A. It is Market Street near Kearney, De Young Building, I believe.

Q. Do you recall what floor his office was on?

A. Possibly fourth floor. I am not positive sure. I know we had to get in the elevator and go up there.

Q. Did you see Mr. Levy at that time?

A. Yes.

Q. Who was with you, if anyone?

A. Mr. Fong.

Q. Were there any other persons present in Mr. Levy's office? [507] A. No.

Q. Now, is that the only time you have been to his office? A. Yes.

(Testimony of Jean Jow Yee.)

Q. That would be in the period from October of 1951, to February of 1952?

A. Somewhere in that time.

Q. In that interval?

A. It was closer to the end of the year of 1950.

Q. 1950 or 1951? A. Excuse me. 1951.

Q. Now, do you recall the purpose of that visit?

A. Very vaguely. I know that it was Friday or Saturday afternoon and I had washed my hair and Mr. Fong said something about—I remember now. It was, Jonathan had written saying that we were supposed to send the Nevada divorce paper to him to Hong Kong and Mr. Fong came to my house to get it, but I said it wasn't at home, it was in the safe deposit box, and being that the banks were closed at that time, I couldn't get to it. And he said something about going up there and delivering some other document to Mr. Levy, either to ask his advice or to show him something, and I said I couldn't go because I had washed my hair. He said put a scarf and come on.

Q. Just give us the purpose of your visit; was it to get some document for Mr. Fong or for yourself?

A. No, Mr. Fong, he asked me to take a ride with him to, as I [508] say, either show Mr. Levy something or to get a document from him.

Q. Let me ask you this question, Mrs. Yee: You didn't have any legal business with Mr. Levy on that occasion, did you? A. No, sir.

Q. Now, Mrs. Yee, the only other places you

have seen Mr. Levy, other than the occasion of seeing him in his office, is at the store, and on one or more occasions at your apartment; is that your testimony? A. I went to his home once.

Q. You went to his home once? A. Yes.

Q. Where is his home located?

A. I am not sure of the address, because it was at night time and Mr. Fong took me there.

Q. Did you go into his home? A. Yes.

Q. Who was present?

A. Just Mr. Levy was there, Mr. Fong was there and I was there.

Q. Was Mrs. Levy there?

A. No, she and the girl had gone to a movie.

Q. When was this, Mrs. Yee?

A. Somewhere in the time when Jonathan was in Reno.

Q. Well, as I recall the testimony, he has been in Reno [509] more than once.

A. The total, well——

Q. Was it the time he got the divorce?

A. The total time from, say, April and May, somewhere in that time. I can't be specific about the dates.

Q. He likewise went to Reno in May of 1952 and married Chin Bick Wah, didn't he?

A. Yes. But we were talking, are we referring to the first divorce?

Q. I wasn't referring to anything. You told me you had been to Mr. Levy's house and I am trying to fix the time. A. Yes.

(Testimony of Jean Jow Yee.)

Q. You say it was at the time that——

A. Then I will be more specific. It was April, either the—I would say for sure it is April of 1951.

Q. Now, did you have any legal business with Mr. Levy on that occasion, or was it Mr. Fong's business?

A. That was to bring him the divorce paper.

Q. When you say the divorce paper, you are referring to the document that you were required to sign, is that right?

A. Not this, the actual—no, let's see. Then I believe it was at a later date—no, it wasn't. It was with a blue cover.

Q. Well, I believe, subject to correction, Mr. Schnake, that the original of this had a blue cover?

Mr. Schnake: Do you know, Mr. Prather? I have no idea; [510] I have not seen the original.

The Witness: No, it's a divorce paper; it has a blue cover.

Q. (By Mr. Burns): We are quite content that it had a blue cover, Mrs. Yee; we're trying to find out if this is a photostat of the document——

A. No, it was not. I remember it was signed in my home.

Q. Well, this document you never signed at all, did you?

A. Not that particular one, but the original of that.

Q. Well, tell the ladies and the gentlemen of the Jury how many documents you had to sign in order to have this divorce go through?

(Testimony of Jean Jow Yee.)

A. I believe two.

Q. You know, as a matter of fact, you only signed one.

A. Well, then I'm not positive sure.

Q. Now, Mrs. Yee, you say that Mr. Levy came to your apartment, is that correct? A. Yes.

Q. Isn't it a fact, Mrs. Yee, that the only time Mr. Levy came to your apartment was after Jonathan had come back from Hong Kong and was living with Chin Bick Wah and you called him at his office and asked him to come and see you?

A. No, sir. That was another time.

Q. That is the only time, isn't it?

A. No. [511]

Q. Isn't it a fact, Mrs. Yee, that you called him at his office?

A. I did not call him at his office.

Q. Did you call him?

A. I did not make the phone call. Mr. Fong made a phone call to him.

Q. At whose request, yours? A. No.

Q. Do you recall, Mrs. Yee, that some time in the middle part of 1951, after your husband had gone to Reno and married Chin Bick Wah, that you called Mr. Levy and asked him to come and see you and that in response to that call he came to your apartment?

A. Could you be a little more specific about what month?

Q. I would say it was in the month of July.

(Testimony of Jean Jow Yee.)

A. No, that is not correct. I did talk to Mr. Levy in the month of August.

Q. Of 1952? A. Right,

Q. At the time that Johnny was in Seattle?

A. Yes.

Q. You asked Mr. Levy to come to your apartment, did you not?

A. No I did not ask him to come.

Q. During the course of his visit at your apartment you complained to him about the fact that Johnny had run off with [512] this other woman and you wanted Johnny back.

Mr. Schnake: Is that a question, Mr. Burns, are you testifying?

Q. (By Mr. Burns): Is that what you told Mr. Levy?

The Witness: Would you repeat that, please?

The Court: Read it, Mr. Reporter.

(Record read.)

A. I told him that in August of '52 when they went to Seattle.

Q. (By Mr. Burns): That's when you asked Mr. Levy to come to your apartment?

A. I didn't ask him to come to the apartment.

Q. Well, regardless——

A. He was returning something to me; he was returning a document to me.

Q. When you say a document, what document do you refer to, Mrs. Yee?

(Testimony of Jean Jow Yee.)

A. There was a child custody agreement drawn up.

Q. Not by Mr. Levy, was it?

A. No, sir.

Q. By an attorney that Jonathan had retained prior to the time he took the children with him and went to Seattle?

A. I wouldn't say retained; he just asked him to draw up this one document and that was it.

Q. And which you signed?

A. Yes, I did. [513]

Q. And then Johnny took the children?

A. Right.

Q. Now, you didn't consult Mr. Levy before you signed that document, did you?

A. I didn't know anything about the document until I was in the lawyer's office.

Q. Mr. Yee's office, is that right?

A. Mr. Samuel Yee, yes.

Q. Mrs. Yee, it's a fact, is it not, that you didn't give that document to Mr. Levy and ask him to examine it?

A. I did not give it to Mr. Levy directly. Mr. Fong had it in his possession and he says I will show it to Bob Levy and ask his opinion of it. And a few days later Mr. Levy returned it to me at my home.

Q. Mrs. Yee, it is a fact that Mr. Levy never had that document in his possession.

Mr. Schnake: Is that a question?

Q. (By Mr. Burns): Isn't it?

(Testimony of Jean Jow Yee.)

A. I don't know how long he had it in his——

Q. I am saying it is a fact he never had it in his possession?

A. You mean he never even saw it?

Q. That's correct.

A. He did so see it.

Q. It is a fact that Mr. Fong didn't see it?

A. Mr. Fong saw it; he had it in his pocket for a few days [514] and he also showed it to several other people, and he reported back to me that it was very binding.

Q. Now, Mrs. Yee, prior to the time that your husband took the children and went to Seattle, isn't it a fact that your husband brought Chin Bick Wah to your apartment and said he was going to take his son and have Chin Bick Wah raise that boy?

A. No, sir.

Q. Didn't you disagree with that?

A. No, sir.

Q. And say you wouldn't let her raise that boy, that you would rather place the boy in a foster home? A. I did not say that.

Q. And isn't that what you did, place the boy in a foster home? A. I did not do that.

Q. Who did that? A. Jonathan did.

Q. You signed the agreement giving your husband full custoday of the children, did you not?

A. At the time of signing the agreement, I did not know the binding effects of it. It was supposed just to be a formality and originally it had been suggested by Mr. Levy.

(Testimony of Jean Jow Yee.)

Q. When?

A. He had suggested different documents. [515]

Q. I am asking you when did Mr. Levy make this suggestion? A. In June of 1952.

Q. Where was this suggestion made?

A. Possibly at the milk store.

Q. I am not asking for possibilities, Mrs. Yee, I am asking you to testify to the best of your ability where it was.

A. I am not sure. I would say the milk store because Mr. Levy did not come to my home too often.

Q. How often did you go to the milk store?

A. Two or three times a week.

Q. When was this meeting with Mr. Levy?

A. Referring to what, now?

Q. The one that you have just mentioned.

Mr. Schnake: Counsel, there have been two or three meetings.

Mr. Burns: She knows perfectly well, Mr. Schnake, which one.

The Court: If she doesn't understand, she may ask, counsel.

Mr. Schnake: All right.

The Witness: I think I would like to make a correction. That would be in May of 1952, that was not June; the latter part of May in 1952.

Q. (By Mr. Burns): The latter part of May of 1952? A. Yes.

Q. That Mr. Levy made the suggestion that you

(Testimony of Jean Jow Yee.)

turn over the custody of your children to your husband? [516]

A. No, he said there should be a document prepared of such, the custody of the children, the division of community property and referring to the car and furniture; and in other words, it should be put down on paper so it would make it look legal that everything was legal.

Q. Well, Mrs. Yee, you are familiar with the fact that you had a divorce decree in your safe deposit box that provided for the custody of your daughter, did it not? A. Yes.

Mr. Schnake: I object to that, the decree speaks for itself, and it doesn't.

Mr. Burns: I am asking her knowledge of its provisions.

Mr. Schnake: That is loading a question which is contrary to facts in the written documents, your Honor. That's worse than suggesting a fact not in evidence.

The Court: She may answer if she does know or does not know.

Mr. Burns: Well, this is a surprise to me if this decree doesn't provide that she is to have custody of her daughter.

Mr. Schnake: Here it is. There is your surprise on that page, then, Mr. Burns; there is no provision for custody.

Mr. Burns: I may be technically in error.

Q. But you were aware of the fact that the Court in Nevada had ordered Johnny Yee to pay

(Testimony of Jean Jow Yee.)

for the support and maintenance of your daughter the sum of $50.00 a month, isn't that correct, [517] Mrs. Yee?

A. That is what it says here, yes.

Q. And you had custody of the daughter, did you not? A. Well, if you put it that way, yes.

Q. She lived with you while Johnny lived in Reno, didn't she?

A. No; at that time she was boarded out. I was working.

Q. Well, she was boarded out in San Francisco while her father was in Hong Kong, wasn't she?

A. Yes, because I was also employed at that time.

Q. Now, do I get your testimony correct, Mrs. Yee, that you want us to understand that in May of 1952 you had a meeting with Mr. Levy where he suggested that some agreement be drafted concerning the custody of your children?

A. Yes, sir.

Q. And the community property rights between you and Jonathan, is that correct? A. Yes.

Q. You say this meeting was at the——

A. Store.

Q. Milk store? A. Yes.

Q. Now, isn't it a fact, Mrs. Yee, you claim this meeting was in May, 1952? A. Yes. [518]

Q. Isn't it a fact, Mrs. Yee, that Johnny went to Reno on May 31, 1952, and married Chin Bick Wah? A. Yes.

(Testimony of Jean Jow Yee.)

Q. Isn't it a fact that you didn't have your second child until some time in June of 1952?

A. Two days later.

Q. And yet you say in May of 1952 Mr. Levy suggested the custody of your children be determined?

A. Well, he knew of the fact that I was going to have a child.

Q. Your husband went to the attorney by the name of Samuel Yee to have this document drafted, is that correct? A. Yes.

Q. Now, you testified about seeing Mr. Levy in an automobile, is that correct?

A. About when?

Q. I can't fix the time, going to ask you to.

A. Well, the arly part—no, the early part of December, 1951. He took me home.

Q. Likewise didn't you see him in an automobile after your husband's return from Hong Kong?

A. Well, are you referring to any incident? I usually tie in something with some incident.

Q. I am quite aware of that fact, Mrs. Yee, but I am trying to fix the time, if it did occur, when you saw Mr. Levy and [519] had a conversation with him and in the presence of Mr. Fong in an automobile after your husband's return from Hong Kong.

A. Not after the return from Hong Kong; it was before—while he was in Hong Kong.

Q. Isn't it a fact, Mrs. Yee, that on one evening you were at the milk store and Mr. Fong was going

(Testimony of Jean Jow Yee.)

to drive you home in his car and you were complaining to Mr. Fong in Mr. Levy's presence about Johnny's conduct in not returning to you and living with Helen and that you were going to commit suicide? A. That was in December of 1951.

Q. While your husband was in Hong Kong?

A. While he was in Hong Kong, not after, not when he came back.

Q. When is the first time that you ever discussed any of the facts of this case with Government investigators?

A. I think the first time was possibly some time in either December of 1955 or January of 1956.

Q. Who was the investigator, or if there were more than one, name them?

A. Mr. Prather and Mr. Moore.

Q. Where was your first meeting?

A. In my home.

Q. At your present address?

A. That's right

Q. Who else was present? [520]

A. Well, I was home with the children at first, and then later Jonathan came home.

Q. This was either in December——

A. Late December.

Q. ——or January of 1956, is that correct?

A. Yes.

Q. On that occasion did you give them a statement? A. I did not.

Q. Did they likewise question your husband upon his arrival? A. Yes.

(Testimony of Jean Jow Yee.)

Q. Now, how many times have you talked to agents or attorneys of the Government since that first meeting?

A. A number of times. I can't recall how many.

Q. Now, did you ultimately give a written statement to Mr. Moore or Prather or to Mr. Schnake?

A. Written statement? No, sir.

Q. Did you testify before the Grand Jury?

A. Yes, sir. I think you asked me that at first.

Q. Prior to the time you testified or at any time, did any agent or attorney for the Government tell you that you were a co-conspirator in this case?

A. Would you repeat the question?

Q. At any time, either before or after you testified before the Grand Jury, or before your testimony here, did any agent or attorney for the Government tell you that you were a co-conspirator in this case? [521] A. Yes.

Q. And that you could be indicted?

A. Yes.

Q. And that you could go to jail?

A. Yes.

Q. Have you been indicted, Mrs. Yee?

A. Before the Grand Jury or—how do you mean?

Q. Have you been indicted, if you know what that means?

A. I am not sure of the definition of that, but I have been named as a co-conspirator on this.

Q. But you haven't been named as a defendant.

(Testimony of Jean Jow Yee.)

have you? A. I don't believe so.

Q. In this indictment or in any other?

A. I don't believe so.

Q. Nor has your husband? A. No.

Q. Now, on April 4 you testified that you had a phone call and that the phone call was, I believe, from Yee Shee, is that correct?

A. No, that was from Ruby Yee.

Q. From Ruby?

A. Ruby, the sister of Mr. Fong.

Q. Ruby Fong? A. Ruby Fong Yee.

Q. Somebody wanted to come and see you, is that correct? [522]

A. Ruby told me——

Q. I know what she told you; I asked you if somebody would be coming and you suggested later because you had some shopping to do, is that correct? A. Yes, some groceries, yes.

Q. And I believe you testified on direct examination that they arrived at 3:10 p.m.

A. Yes.

Q. Now, how is it that you recall the precise moment of this arrival; did you write it down?

A. No, it was such a recent meeting that I remember it all. For one thing, my daughter gets home from school about a quarter to three; then she leaves for Chinese school at 3:30 and directly after she came home from school, well, she drank her milk and all and then I took her over to the fellow that was taking the kids to Chinese school that day.

(Testimony of Jean Jow Yee.)

Q. Tell me this, Mrs. Yee: After you received the telephone call stating that somebody wanted to see you, did you then phone any agent or attorney of the Government to tell them that this meeting was going to take place? A. Yes.

Q. Who did you phone?

A. I believe I talked to Mr. Moore.

Q. Did you receive certain instructions from Mr. Moore? A. No; not at the time. [523]

Q. Did Mr. Moore come to your home?

A. No, he did not.

Q. Did some other agent of the Government come to your home? A. Yes.

Q. Were they present while this meeting was going on? A. Yes.

Q. They weren't present at the meeting, though, were they? A. Yes.

Q. They weren't in the room, were they?

A. No.

Q. They were listening, is that correct?

A. Yes.

Q. Who was that agent?

A. Mr. Prather and Mr. Leo.

Q. You afforded them a place where they could observe, isn't that correct? A. Yes.

Q. You afforded them a place where they could eavesdrop, is that correct? A. Yes.

Q. Now, on Monday of this week in the night time did you discuss Johnny's testimony with him that he had given in this courtroom that day?

A. Very little.

(Testimony of Jean Jow Yee.)

Q. Did Johnny tell you he had testified that Mr. Levy had [524] attended the dinner on March 16, 1951, welcoming Chin Bick How to this country?

A. The name is Chin Bick Wah and he, Johnny, did not mention it to me, and I know for a fact that Mr. Levy was not present at the dinner.

Q. My question is this, Mrs. Yee: Did Johnny tell you that he had testified in this courtroom?

A. No, he didn't mention it.

Q. That Mr. Levy had attended that dinner?

A. He didn't mention it.

Q. Did he tell you the next day? A. No.

Q. That he changed his testimony?

A. No.

Mr. Burns: That's all.

Cross-Examination

By Mr. Davis:

Q. Mrs. Yee, when did you first meet Mr. William Fong? A. About 1946.

Q. Under what circumstances did you meet him?

A. I was introduced to him by, I believe, by Jonathan.

Q. And where?

A. In the neighborhood of the milk store. I don't remember whether it was in the milk store or in front of it.

Q. Where was your husband employed then?

A. Fong Brothers' Dairy.

(Testimony of Jean Jow Yee.)

Q. You were married to Johnny then, though?

A. No.

Q. That was about how long before you were married? A. About a year later.

Q. Did I understand your testimony correctly to be that from 1946 up until Johnny left the employ of—withdraw that.

Did I understand your testimony to be that you dropped by the milk store two or three times a week? A. From 1946 on?

Q. Yes.

A. No, at first it wasn't, it wasn't so at first until about two years later.

Q. Between '46 and '48 how long, how often did you drop by?

A. Possibly once a week or less.

Q. Did I understand your testimony to be that you dropped by either with yourself or with Johnny, isn't that what you said yesterday, you stopped after work, either by yourself or with Johnny?

A. From what date on are you referring to?

Q. Say from 1948 on. A. Yes.

Q. Johnny was working in the store then, wasn't he? A. We would stop by in the evenings.

Q. Was that after work? [526] A. Yes.

Q. What hours did you work?

A. Well, we worked until about 6:00, 6:30 in the evening.

Q. I asked you for your hours, first; what hours did you work?

(Testimony of Jean Jow Yee.)

A. Usually from 8:00 to about 5:00 o'clock.

Q. Where did you work during this period of time? A. What year is this, now?

Q. You said from 1948 on, that is what we are talking about.

A. I believe I was working at the Lawrence Warehouse Company on Drumm Street.

Q. And Johnny was working at the milk store?

A. Yes.

Q. Now, when you and Johnny—when did you and Johnny drop in the store after work, later in the evening after you both——

A. Yes, after dinner.

Q. You would both go home and come back, is that what you meant?

A. At times, yes; at other times, I mentioned the fact that I would drop in by myself after work and he would still be there.

Q. In other words, sometimes you came to the store alone and met Johnny there?

A. That is right.

Q. Other times you and Johnny came back later in the evening?

A. He had some sort of a milk route and later in the evening [527] we would come back and do some book work.

Q. Do you remember the date when Gee King Yip broke her hip?

A. She didn't break her hip; her leg.

Q. Her leg.

A. Yes, I remember. It was New Year's Day,

(Testimony of Jean Jow Yee.)

January 1, 1949

Q. Was she in the hospital?

A. Yes, she was in the Chinese Hospital.

Q. Where is that?

A. It is located on Jackson Street between Stockton and Powell in San Francisco.

Q. How long was she in the hospital?

A. About four and a half months.

Q. Now, if I understand your testimony of yesterday correctly it was about this time that you had a conversation, or you alleged, testified, that you had a conversation with Mr. Fong, is that correct?

A. How do you mean alleged? I don't quite understand that.

Q. Want me to reframe the question, your Honor?

A. I didn't quite understand your question.

Q. Well, I said that if I understand your testimony correctly yesterday you stated that it was about this time that you had a conversation with William Fong.

A. You mean during her confinement in the hospital?

Q. That is correct. A. Yes. [528]

Q. Where did that conversation take place?

A. At the milk store.

Q. Who else was there, if anyone?

A. Well, we had numerous conversations at the store.

Q. Let's go back to the first one now that you

(Testimony of Jean Jow Yee.)

testified to yesterday about the time that Gee King Yip was in the hospital.

A. Well, she was in there four and a half months and that is a long period of time to just mention one meeting, because there were several meetings.

Q. We can't discuss all the several meetings at once, so I suggested that we take the first meeting and let's talk about that.

A. What was it you wanted to know? I forgot the question.

Mr. Davis: Read the question, please.

(Record read.)

The Witness: We had numerous conversations.

Mr. Davis: Would you read the question again?

(Record reread by the reporter.)

The Witness: And you want to know who was present?

Q. (By Mr. Davis): That was the question.

A. Is that the question?

Q. Who was; where did it take place, and who, if anyone else, was present?

A. It took place at the milk store. Mr. Fong, Jonathan and myself were present, but I am not positively sure about Mr. [529] Levy's presence.

Q. What time did it take place?

A. In the evening when we were all free from our regular work.

Q. Did you or did you not see a picture at that time, photograph?

(Testimony of Jean Jow Yee.)

A. As I say, it was possibly not at the first meeting.

Q. Do you recall any meeting with Mr. Fong about that time at which you did see a picture?

A. You are referring to Gee King Yip's—during the time of Gee King Yip's confinement?

Q. Yes.

A. Yes, I do recall seeing a picture of Chin Bick Wah in a Chinese dress and flat-heeled shoes.

Q. Where did you see that?

A. Mr. Fong took it out of his pocket with an envelope and a letter and showed it to us.

Q. Did you know who this was at that time?

A. No, I did not.

Q. Now, directing your attention to the month of December, 1950, I believe your testimony was yesterday that you had a conversation with Mr. Fong in that period of time, is that correct?

A. Yes, that was when the divorce was first brought up; I should say the divorce idea was first brought up. [530]

Q. Where did that conversation take place?

A. At the milk store.

Q. And who, if anyone else, was present?

A. Mr. Fong, Mr. Levy, Jonathan and myself.

Q. Now, moving ahead for a moment, Mrs. Yee, to the time when Jonathan went to Seattle, did I understand your testimony to be that he came to where you were working and said he was going to Seattle?

(Testimony of Jean Jow Yee.)

A. He did not give me the destination; he just said he would be out of town for a few days.

Q. And you say that he had your little girl with him at that time? A. Yes.

Q. Where was she living then?

A. 1544 Powell Street.

Q. With you? A. Yes.

Q. And you were working?

A. And the landlady's daughter took care of her.

Q. Isn't it a fact that you testified yesterday that you said that Johnny came where you were working and said—and had your daughter with him and said, "I am going away out of town for a while and I am going to take the little girl with me"?

A. He said he would be gone for a few days and he thought it [531] would be nice to have the little girl along and he would be back not later than Sunday.

Q. Well, did the little girl go with him?

A. Yes.

Q. Was that the first you had heard he was going away and take the little girl with him when he came to the store where you were working?

A. Yes, but he didn't mention he was going to Seattle.

Q. I didn't mention Seattle, either, Mrs. Yee.

A. You did.

Q. Pardon? A. You did.

Q. I am sorry if I did. But he did come to the

(Testimony of Jean Jow Yee.)

store saying he was going away and taking the little girl with him?

A. He said he was going out of town for a few days to work and he said he would take the little girl, it would be nice to have the little girl along because where he was going he was staying with some family and they would look after the little girl during the day.

Q. Did you ask him where he was going?

A. Yes.

Q. What did he tell you?

A. To Maxwell, California. That is near Sacramento.

Q. Did you ask him if he had made arrangements about taking the little girl's clothes? [532]

A. He said he was taking a few things of hers along and enough for a week and enough for, well, for a young child's needs.

Q. Where was the little boy at that time?

A. He was boarded out.

Q. Where was that?

A. I can't tell you the exact address, it has been so many years ago, but it is off Alemany Boulevard, near Junipero Serra Boulevard, Mrs. Lewis.

Q. Going back again, Mrs. Yee, to this—do you recall the time when Chin Bick Wah arrived from Hong Kong? A. Yes.

Q. I believe it is your testimony that you went to the airport? A. I did.

Q. Can you tell us again who was there?

A. There was, I should say, Wong Bing, Chin

(Testimony of Jean Jow Yee.)

Jueng, aunt and uncle of Chin Bick Wah; there were two young men, one, I believe, by the name of Wong; there was Mr. Levy, Mr. Fong, Ruby Yee, Jonathan, myself, and our little girl.

Q. Was there another couple there, man and wife, I believe, by the name of Wong?

A. I said Chan Jueng and Wong Bing.

Q. No, but I mean besides them, another couple?

A. No.

Q. They were not at the airport? [533]

A. I don't recall any other couple.

Q. Do you recall any other couple at the restaurant that you went to afterward for the dinner?

A. No. There were just the before-mentioned people.

Q. Isn't it a fact that there was a man by the name of Chew Wong and his wife, both at the airport and at the restaurant?

A. Who was that again?

Q. Chew Wong. A. I don't recall.

Q. Do you know anybody by that name?

A. No.

Q. Now, going back to the airport again, will you tell us the order in which you left the airport?

A. Could you express a little more what you mean by "in what order"?

Q. Well, I was trying to save time.

A. We didn't follow one another.

Q. Which persons left the airport first?

A. Well, we were in the lobby waiting for Chin Bick Wah.

(Testimony of Jean Jow Yee.)

Q. By "we," whom do you mean?

A. That was the aforementioned people: Chan Jueng, Wong Bing, Jonathan, myself, my little girl, Mr. Fong, Mr. Levy, Ruby Yee and Chin Bick Wah, we were waiting in the lobby for her luggage, and as soon as her luggage came, why, Wong Bing and Chan Jueng [534] put it in their car. Then we had a discussion that we would leave and meet in San Francisco Chinatown for dinner.

At that time Mr. Levy was asked to join the dinner but he said he had other commitments and he couldn't make it. So he left. I can't say for sure that he was the first one to leave, but he left, and, well, Jonathan, myself and my little girl left in our car; Mr. Fong, Chin Bick Wah and Ruby Yee left in his car, in Mr. Fong's car; and Chan Jueng and Wong Bing and the other two men left in their car.

Q. Did all of these people meet again?

A. Yes, at the restaurant, Sun Hung Hueng, Washington Street, San Francisco.

Q. You, as I understand your testimony, you hand dinner there? A. Yes.

Q. And after the dinner?

A. Well, previous to right after leaving the airport, a few of us went to Mr. Fong's mother's place at 1041 Washington Street.

Q. Which ones went there?

A. Well, Jonathan, myself and our little girl and Mr. Fong, Chin Bick Wah and Ruby Yee, and there Chin Bick Wah was introduced to Mr. Fong's

(Testimony of Jean Jow Yee.)

mother and she was asked to join the dinner, but she declined.

Q. Then you went to the restaurant?

A. And then on our way down, on our way downstairs, Mr. Fong [535] pointed out different places where his sisters lived, and he pointed to his own place on the second floor.

Q. And then did you get to the restaurant?

A. Yes, we did.

Q. Did you have dinner? A. Yes.

Q. When the dinner was over, who was the first to leave the restaurant?

A. Well, we all left about the same time and in different cars.

Q. Who was in your car?

A. Jonathan, myself, my little girl, and Ruby Yee.

Q. Where did you go?

A. To Oakland to the residence of Mr. and Mrs. Wong, known as Wong Bing and Chan Jueng.

Q. Do you know where Chin Bick Wah went and with whom?

A. Yes; she went with the aunt and uncle, Chin Jueng and Wong Bing, she was in their car and her luggage was also in the car.

Q. Isn't it a fact, Mrs. Yee, that Chin Bick Wah and Jonathan left together and went to Oakland alone? A. No, they did not.

Q. Mrs. Yee, after Jonathan had gone to Seattle, as I understand it, you received a telephone call, is that correct? A. Yes, sir. [536]

(Testimony of Jean Jow Yee.)

Q. From whom? A. Jonathan.

Q. What did he say and you say to him in that conversation?

A. He said to me that the little girl was very ill and was calling for me and if I could come up right away and bring some money, bring some—well, bring some clothes, change of clothing and bring some money, as she was very ill and calling for me.

So I said, well, I'll try to do the best I could, because I was working then, and so later on I did make arrangements to go up there.

Q. And you did go?

A. Yes, I left the same evening by Western Airlines.

Q. Mrs. Yee, you said that you never made any written statement in this case, is that correct?

A. No. What are you specifically referring to?

Q. Well, if I understand your testimony correctly, you said you did not make any written statement relating the facts, as you know them, in this case, to any Government agent.

A. No, I have not.

Q. You have not made——

A. I have not, no.

Q. By that do you mean you didn't write out any statement?

A. No one even took a statement from me.

Q. Were you ever present when—— [537]

A. Except to the Grand Jury, if that is what you are referring to.

Q. No, not to the—before the Grand Jury, be-

(Testimony of Jean Jow Yee.)

fore you appeared before the Grand Jury, were you ever present with Government agents discussing the case with them when there was a stenographer present taking down your answers?

A. No, sir.

Q. Now, did any of the Immigration agents or any of the attorneys in this case discuss your husband's, Johnny's, immigration status with you?

A. Not too much. They mention the fact that he was here on a bought paper.

Q. Did they tell you that he would be deported, that he was subject to being deported?

A. They might have mentioned it.

Q. Well, can't you be more definite than that? Do you know whether they mentioned it or not?

A. I am not positively sure on that.

Q. Do you know of your own knowledge that your husband is subject to deportation?

A. There's a possibility.

Q. Did any of these agents ever tell you that because he was married to you as a citizen that his deportation might be suspended?

A. No, they did not mention anything like that to me. [538]

Q. Did anyone else mention that to you?

A. Mr. Fong made a reference to that, but he says if he is deported in one year's time you can bring him back.

The Court: We will take a recess at this time.

(Short recess.)

(Testimony of Jean Jow Yee.)

The Court: Proceed, Mr. Davis.

Q. (By Mr. Davis): Mrs. Yee, at this meeting on April 4, 1956, in your home when the agents were listening in—— A. Yes.

Q. Did you know that the agents had taken a statement from Mr. Levy the day before?

A. No, I did not.

Q. Did you know that they had talked to Mr. Fong twice on the day before that, the day before the meeting?

A. No, only the fact that Mr. Fong mentioned it himself.

Mr. Davis: That's all.

Redirect Examination

By Mr. Schnake:

Q. Mrs. Yee, Mr. Burns asked you if there was one occasion that Jonathan Yee had used physical violence and you had said that was after Reno.

A. Yes, sir.

Q. Do you know when that was exactly?

A. September of 1951.

Q. When in relation to your anniversary?

A. A day or two before. [539]

Q. Was that all part of the same incident you had previously testified to regarding the argument and Benton Fong?

A. Yes, that argument was—with Benton Fong, was just about two days after.

Q. Did you ever tell Mr. Fong that you had

(Testimony of Jean Jow Yee.)

had a fight where Jonathan had actually shoved you? Or did Mr. Fong ever mention it to you?

A. Well, at the time I didn't tell Mr. Fong directly.

Q. Did he ever say anything to you about it?

A. Yes, he mentioned it at the—he mentioned it to me.

Q. When?

A. At the April 4 meeting in my home.

Q. April 4 of what?

A. Of 1956, he mentioned it to me. And he said something about he was taking me home at that—no, let me think. He, Mr. Fong, said that he was—after we had the fight—he took me home in the car about two days after we had the fight and he did mention to me the fact that he knew that I was going along with the idea of the divorce and the marriage—no, at the time it was only the divorce. He said I was going along and living up to my word, but he didn't know for sure about Jonathan's word, and what he was going to do after he brought Chin Bick Wah to this country.

Q. Is this what he said on April 6, 1956, reminding you—— A. April 4. [540]

Q. April 4? A. Yes.

Q. Was this reminding you of something he had said years before; is that right? A. Yes.

Q. Now, Mrs. Yee, Mr. Burns asked you about a visit to Mr. Levy's close to the end of the year 1954 on a Friday or Saturday, when Jonathan had

(Testimony of Jean Jow Yee.)

written stating he needed the divorce papers. You recall that question and answer?

A. Yes. You mean to Mr. Levy's office?

Q. Mr. Levy's office. A. Yes.

Q. Can you tell us who was present at Mr. Levy's office when you went there?

A. Mr. Fong, Mr. Levy and myself.

Q. Can you relate the conversation that took place at that time and place as best you can recall it?

A. I don't recall that there was too much conversation. We were there for just a short time.

Q. Was there any conversation at all regarding any divorce papers?

A. Yes, he wondered if I had it with me and I said no.

Mr. Burns: Could I ask who wondered?

Q. (By Mr. Schnake): Yes. Who said that?

A. What was that again? [541]

Q. Who said he wondered if you had it with you?

A. Mr. Levy, he asked if I had the divorce papers with me and I said no, I kept it in the safe deposit box and the banks were closed at that time of the day.

Q. Now, Mr. Burns asked you on two occasions in his examination whether or not Jonathan had gone to Reno in May of 1952 for the purpose of marrying Chin Bick Wah.

A. Not two occasions.

(Testimony of Jean Jow Yee.)

Q. No, but he asked; Mr. Burns asked you on two occasions, I am reminding you of that.

A. Oh, yes.

Q. Now, do you recall how long that trip to Reno was?

A. Yes, in one day's time, early in the morning to late in the evening.

Q. In other words, did Jonathan Yee——

A. (Interrupting): Got out of bed very early in the morning and said he had to go out of town for the day, and I told him not to stay away too long because the birth of the baby was due any day now.

Q. And did he return that night?

A. So he said yes, he would be just, just be gone for the day and he will come back that same night, and that was about, possibly 11:00 o'clock when he did return.

Q. Did he remain at the home that night?

A. Yes. [542]

Q. And the following night?

A. Well, the next day we took a trip to my mother's house.

Q. Who?

A. Jonathan, myself and the little girl.

Q. All right. Now, Mr. Burns asked you about this custody agreement that Mr. Samuel Yee prepared, and you stated that you signed it at Mr. Yee's office—— A. That is correct.

Q. Is that correct? A. That's correct.

Q. About when did you sign that, what month?

(Testimony of Jean Jow Yee.)

A. In July of 1952.

Q. At the time you signed it in Mr. Yee's office, did you have any discussion with him as to the meaning or import of the agreement?

A. We had just a little discussion on it and Mr. Yee says, Mr. Samuel Yee, that is, said that it was just a formality; in other words, to put it down on paper that he will be responsible for the children in case, if I am not able to support them.

Q. Now, at the time did either you or Jonathan in your presence inform Mr. Yee of any agreement to go through a sham divorce?

A. Not at that particular meeting, no.

Q. In other words, at the time that agreement was drawn up [543] and signed——

A. We were just, well, very—well, he was a complete stranger to me.

Q. Just say what you said, that is all I am asking. A. No.

Q. You said nothing about that subject?

A. Nothing was said about that.

Q. Now, on that same subject, did you go to Mr. Yee's office regarding that same custody agreement in August when Jonathan had gone to Reno?

A. Yes, I did.

Mr. Burns: Reno?

Mr. Schnake: I meant to Seattle, I am sorry.

Q. Now, on the first occasion you went to see Mr. Yee, what, if any, conversation did you have with him about this custody agreement and its effect?

(Testimony of Jean Jow Yee.)

A. Well, I went to Mr. Samuel Yee's office and told him that Jonathan had left town with the children and I said from my understanding I was to know where the children were at all times, and he says, Mr. Yee. Samuel Yee said that the children were not supposed to leave town and that if so Jonathan was to inform me.

So I spoke to him and said that I was getting a very unfair deal out of this thing, but I was very vague about the details to him. [544]

Q. Now, did you have another conversation with Mr. Samuel Yee a few days later on the same subject about the custody agreement and how you were being treated?

A. Yes, that was, say, about two days later.

The Court: Mr. Schnake, this is not rebuttal.

Mr. Schnake: Your Honor, we are going to show in this an actual overt act in furtherance of the conspiracy in her telling the attorney in August of 1952 about the fact that this was supposed to be a sham divorce and that he should assist her in seeing to it that the agreement, to put the parties back in their original status, be carried out. So it was in furtherance of the conspiracy in order that she would get one of the objects of the conspiracy, which was to have her own husband back and that the parties would assume the relationships they desire, and that therefore it was an overt act on her part, and not offered as a declaration, but actually an act attempting to further the conspiracy.

(Testimony of Jean Jow Yee.)

The Court: Is this redirect examination?

Mr. Schnake: Your Honor, it is on the subject of this custody agreement and how she was being questioned——

The Court: I don't think the statements made to this other attorney, statements of this witness to the other attorney, are admissible.

Mr. Schnake: All right, your Honor. I will pass that subject. [545]

Mr. Burns: We will object and move that that testimony be stricken and likewise the jury cautioned regarding the remarks and speech by Mr. Schnake.

The Court: The testimony of this witness concerning statements made to the attorney, Samuel Yee, are stricken from the record, and the jury is instructed to disregard them.

Q. (By Mr. Schnake): Now, when you were questioned by Mr. Burns, Mrs. Yee, you stated that you had boarded the child out, the youngest child out. A. Yes.

Q. While, at the time that John had gone to Reno, May 31, 1952? A. No.

Q. I'm wrong on that?

A. The child was not born at that time yet, not until two days later.

Q. All right. You testified, I believe, though, that while Jonathan was gone to Hong Kong you boarded the child out, is that right?

A. Speaking of the little girl, yes.

Q. Yes. Now, the times in 1951 and 1952 when

(Testimony of Jean Jow Yee.)

Jonathan was at the home, did you board the child out?

A. I boarded the child out during the week when I was working, and I worked all of '51 until March of 1952.

Q. I see. Now, Mr. Burns asked you whether or not the Government agents informed you that you were a conspirator and [546] that it was possible that you might go to jail. I will ask you, Mrs. Yee, at any time has any agent of the Government ever made any promise of immunity to you, promise you you would not be prosecuted?

A. No, they did not.

Q. Any one ever threaten you that you would be prosecuted if you did not co-operate with the Government? A. Would you——

Q. Has anybody ever told you that you would be prosecuted if you did not co-operate with the Government? A. No.

Q. Any agent of the Government that ever said that? A. No.

Q. Now, has any agent of the Government ever told you that your husband would be prosecuted or deported if you or he did not co-operate?

A. No.

Q. Now, you have told Mr. Burns that you phoned Mr. Moore immediately after you received the telephone call from Ruby Yee on April 4, is that right?

A. Yes, he was the only one I could get a hold of.

(Testimony of Jean Jow Yee.)

Q. Why did you do that?

Mr. Burns: I am going to object to that as calling for the opinion and conclusion of the witness.

The Court: I think so. [547]

Q. (By Mr. Schnake): Had you received any instructions or requests from the Government agents as to what you should do in the event that Mr. Fong or any member of his family contacted you? A. No.

Q. Now, you testified on cross-examination from Mr. Burns that you did not tell Jonathan the night he had finished testifying about the point of Mr. Levy's going to dinner at the time of Chin Bick Wah's arrival, that you did not tell Jonathan that.

A. No.

Q. Did you, however, hear me ask Jonathan about that in your presence?

Mr. Burns: I am going to object——

A. No.

Mr. Burns: ——to a conversation between the prosecuting attorney and the witness.

Mr. Schnake: I want to clarify how that matter was discussed with Jonathan Yee, if at all.

The Court: I think you may ask that, what was said in her presence.

Mr. Burns: Can we have the time and place and persons present, if this is going to be a conversation, and no leading?

Mr. Schnake: Are you through?

Q. Did you, on the evening of Monday, that is—— [548] A. Just this past——

(Testimony of Jean Jow Yee.)

Q. Last Monday. A. Yes.

Q. Were you present when I asked Jonathan if he was sure that Levy went to dinner?

Mr. Burns: I am going to object to the conversation and the question in that form, your Honor.

The Court: That is leading.

Mr. Schnake: All right.

Q. Did you hear me talk with Jonathan Yee about that subject at all on Monday? A. No.

Q. All right. I believe in response to a question from Mr. Davis, you stated that you didn't recall a man by the name of Chew Wong and his wife? A. No.

Q. At the restaurant after Chin Bick Wah arrived, is that right? A. No.

Q. Now, was there a person named Wong at the restaurant, rather, at the airport, whose first name you did not know?

A. Well, there were two young men; I believe one of them was Wong.

Q. Do you know what his first name was?

A. Of the two young men? [549]

Q. Yes. Do you know what the first name of Mr. Wong was? A. No.

Mr. Schnake: Thank you. That is all.

Mr. Davis: No questions.

Mr. Burns: No questions.

The Court: Step down, please.

(Witness excused.)

Mr. Schnake: Samuel Yee.

SAMUEL YEE

called as a witness on behalf of the Government; sworn.

The Court: What is your name, please?

The Witness: Samuel Yee, your Honor.

Direct Examination

By Mr. Schnake:

Q. What is your occupation, Mr. Yee?

A. I'm an attorney.

Q. Have you been subpoenaed to appear here in this proceedings? A. I have.

Q. Now, are you acquainted with Jean Jow Yee? A. I am.

Q. In the sumer of 1952, did you have occasion to prepare an agreement for Jonathan Yee?

A. Yes, I did.

Q. And about what date was that that you prepared the agreement?

A. It was some time in the latter part of July. [550]

Q. Of what year? A. 1952.

Q. Did Jean Yee come to your office when that document was prepared?

A. She didn't come on the first occasion, as far as my memory serves me, but she was there at the time of the signing of the agreement.

Q. Then do you recall, Mr. Yee, an occasion in August of 1952, when Jean Yee came to your office?

A. Yes, I do.

(Testimony of Samuel Yee.)

Q. Did you have a conversation with her at that time? A. I did.

Q. Who was present?

A. I think she was alone at that time.

Q. Can you tell me what subject that conversation related to, or rather, would you state what took place at that conversation?

Mr. Burns: I am going to object on behalf of the Defendant Levy as to this conversation, not binding on him, some declaration of one of the co-conspirators to an attorney; likewise, I think there is some question as to whether Mr. Yee is competent to testify.

The Witness: Your Honor, if I may interrupt, I was given a waiver of that privilege by Jean Yee before I came to court here.

Mr. Davis: I understand his client is Jonathan Yee. [551]

Mr. Schnake: Well, no, this is regarding a conference with Jean Yee, and the attorney-client relationship between Jean Yee and Mr. Samuel Yee.

The Court: This is a matter that was brought up when the other witness was on the stand.

Mr. Schnake: Could I point out another additional factor, your Honor?

The Court: I didn't think it was material or within the issues here.

Mr. Schnake: Could I just point to this, your Honor: The indictment alleges, and the evidence has shown, that three important objects of the conspiracy had not yet been accomplished by August

(Testimony of Samuel Yee.)

of 1952. One, the divorce of Chin Bick Wah had not occurred; two, the divorce of William Fong from his wife had not occurred; and three, at the time of this conference in August of 1952, Chin Bick Wah and Jonathan Yee had gone to Seattle, so that the conspiracy was far from reaching any possible point of completion, and the statements that were made to this attorney, were made by the conspirator, Jean Yee, for the purpose of attempting to get legal services to accomplish one of the objects of the conspiracy. That is the basis on which it is offered.

Mr. Burns: I make the same objection, your Honor.

The Court: I don't believe it is admissible, Mr. Schnake. Who first consulted you in reference to any of these [552] matters?

The Witness: The first occasion was Jonathan.

The Court: I don't think it is admissible.

Mr. Schnake: Very well. I have no further questions.

The Court: That is all. Step down.

(Witness excused.)

Mr. Schnake: Call Mr. William Moore.

The Court: The witness has been sworn.

WILLIAM MOORE

recalled; previously sworn.

Further Direct Examination

By Mr. Schnake:

Q. Mr. Moore, on April 4, 1956, did you receive a telephone call from Jean Yee? A. I did.

Q. About what time?

A. Shortly before 2:00 o'clock in the afternoon.

Q. After you received that telephone call, did you and certain other agents go somewhere?

A. We did.

Q. Where did you go?

A. We went to Jean Yee's home on Hale Street in San Francisco.

Q. Did you go in the home? A. I did not.

Q. Where did you go and what did you do?

Mr. Burns: I am going to object to what he did outside [553] the presence of the defendant.

The Court: This is preliminary, I take it.

Mr. Schnake: Yes, it is.

The Court: I will permit it.

Q. (By Mr. Schnake): What did you do, Mr. Moore?

A. I let Mr. Prather and Mr. Leo out of the car in front of Mrs. Yee's home. I drove the car to the end of the block on a slight incline above the level of Mrs. Yee's home and parked the car on the opposite side of the street where I sat and observed the front door of Mrs. Yee's home for a period of time.

(Testimony of William Moore.)

Q. Did you see a woman and a man enter the home at 218 Hale Street? A. I did.

Q. At what time, approximately?

A. Be shortly after 3:00 o'clock.

Q. Do you know who those two people were?

A. I do.

Q. Who were they?

Mr. Burns: Pardon me, Mr. Moore. I am going to object to the testimony being admitted against the Defendant Levy on April 4, 1956. He had given a statement to the agents the day before on April 3 and certainly the acts and declarations of co-conspirators wouldn't be binding on him then.

Mr. Schnake: Your Honor, I think our memorandum of cases regarding—where the express object of the conspiracy is to [554] conceal and to induce witnesses to give false testimony——

Mr. Burns: Well, now, pardon me, your Honor, I don't like Mr. Schnake's making these long speeches.

The Court: I don't like either one of you making speeches. The testimony will be admitted to prove, if it does prove, the existence of a conspiracy. It will not, however, be admitted against the Defendant Levy: If it is a declaration of any party it will be admitted as a declaration of that party, if theer is a declaration to be proven.

Q. (By Mr. Schnake): Would you go ahead?

The Court: Limited to that, for those purposes. Who entered the building?

(Testimony of William Moore.)

The Witness: Mr. William Fong and his mother, Yee Shee.

Q. (By Mr. Schnake): Had you seen Mr. Fong on previous occasions? A. I had.

Q. Did you observe the registration on the automobile driven by Mr. Fong?

A. I observed the license number.

Q. Who is that automobile registered to?

A. I attempted to locate a registration on that automobile and the registration at that time had not cleared through Sacramento. However, Ruby Fong was contacted the following day——

Q. No; I was asking if you knew from [555] records. A. No; I don't.

Q. Now, how long did the parties remain inside that building, if you know?

A. I'd say it was until about 4:35 or 4:40.

Q. All right. What did they do then?

A. Got into the car and—in front of the house, and drove up the street, passed where I was parked.

Mr. Schnake: That's all.

Mr. Burns: I have no questions.

Mr. Davis: I have none.

The Court: Step down.

(Witness excused.)

Mr. Schnake: Mr. Francis Leo will be the next witness.

FRANCIS LEO

called as a witness on behalf of the Government, sworn:

Direct Examination

By Mr. Schnake:

Q. Please state your name.

A. Francis Leo.

Q. Are you employed by the U. S. Immigration and Naturalization Service? A. Yes, sir.

Q. In what capacity?

A. I'm an interpreter.

The Court: How do you spell the last name?

The Witness: L-e-o. [556]

Q. (By Mr. Schnake): On April 4, 1956, did you go to the home of Jean Yee? A. Yes, sir.

Q. Would you state the circumstances under which you made that trip?

A. On April 4, 1956, about 2:00 o'clock I was ordered by my supervisor to accompany investigators Prather and Moore on an assignment.

I went with them to a house at 218 Hale Street and Mr. Prather and I then got out of the car and went up to this house where were admitted by a lady that I was introduced to later as a Mrs. Jean Yee. At that time she was home alone with her little son. We arrived there about 2:30 and shortly after that her daughter came home, and after she had given her milk, Mrs. Yee took her son and daughter away.

Before she left, however, she arranged for us to be seated in a bedroom that was adjacent to a liv-

(Testimony of Francis Leo.)

ing room. These two rooms were separated by a thin door, and in front of the door on the living-room side there was a large sofa blocking the way there.

I was seated immediately next to the door on the bedroom side.

Mr. Prather was seated slightly behind me.

Q. Would you tell us what transpired after that? [557]

Mr. Burns: On behalf of the Defendant Levy, we make the same objection heretofore made as to the testimony of Mr. Moore, that it is not binding on him, the acts and declarations that were overheard or observed by this witness.

The Court: As I stated before, it is admitted solely as the declaration of the preson making it and to prove, if it does prove, any conspiracy. It is not admitted as a declaration against any party who is not present.

Q. (By Mr. Schnake): Would you state what then transpired, Mr. Leo?

A. Mrs. Yee returned and——

The Court: I can't hear you, Mr. Leo. Sit back from the microphone and speak out; we will hear better, I think.

The Witness: Yes, sir. Mrs. Yee returned and knocked on the bedroom door and said to Mr. Prather that Bill Fong and the old lady, his mother, was coming.

Mr. Prather closed the door and showed me his watch, which indicated that it was 3:16. After that,

(Testimony of Francis Leo.)

the front door was opened and I heard three voices. I recognized Mrs. Jean Yee's voice. There was a male voice and an elderly woman's voice.

I have taken notes of what was said during the conversation that took place among these three people.

Q. All right. Do you have those notes with you?

A. Yes, sir.

Q. All right. Just find from those notes and your recollection, [558] would you state the conversation that you heard, designating the parties as Jean, male and female.

Mr. Burns: Could we see, first of all, examine the notes, your Honor?

The Court: Not at this time. You may before cross-examining.

Q. (By Mr. Schnake): Go ahead, Mr. Leo.

Incidentally, before you start, will you state whether or not this conversation was in English or Chinese, or both?

A. Well, this conversation took place both in English and Chinese. It was a mixture of the both.

Q. All right. Now, would you relate your best recollection, aided by those notes, as to exactly what was said, Mr. Leo?

A. The first thing I heard was: Jean Yee asked why the leisure.

Mr. Burns: Pardon me. I didn't hear you, Mr. Leo.

The Witness: Why the leisure.

(Testimony of Francis Leo.)

The Court: I don't hear that; I don't understand it. Why the what?

The Witness: Leisure.

The Court: All right.

A. (Continuing): The old lady said: It's regarding the immigration matter. Has the immigration interrogated you?

Jean said not recently. Bill Fong said, or I should say——

Q. The male? [559]

A. The male voice: Did you give the pictures to the immigration?

Jean Yee said, no.

The male said: There were four pictures, two snapshots, two enlargements and there was a picture of you, me, Johnny, taken at the airport when we were down there to see Johnny go to China.

Vivian said you testified to the immigration.

Mr. Burns: Pardon me. I don't understand that "Vivian."

Mr. Schnake: Vivian, that is Vivian Fong, already identified. This is quoting Mr. Fong's remarks, saying Vivian said. [560]

Q. Go ahead, Mr. Leo.

A. (Continuing): Vivian said you testified to the Immigration. She said you said Johnnie and I didn't have a real divorce. See the snapshot, I am smiling.

Jean said, no.

Then male voice said: Vivian is making a lot of

(Testimony of Francis Leo.)

lies. Then, here is what she said—she said that you said Johnnie and I did not have a real divorce. See the snapshot? I am smiling.

Jean said: When did you see her? Friday night? Johnnie said he saw you and her at On On Cafe.

Fong said: No, Vivian called——

Mr. Schnake: Would you say male voice?

A. All right. Male voice said: No, Vivian called me to go out to see her. She said you confessed that you were not actually divorced for good. She said that you told them that I threatened you and that I was going to the Immigration and say that Johnnie was illegally here, that Johnnie, me, Bob Levy talked it over at the store, that we had a conference.

Jean's voice: He did reassure me.

Mr. Davis: I can't understand.

Mr. Schnake: He did reassure me.

The Court: I don't hear that or understand that either. What's the last, Mr. Reporter?

(Record read.) [561]

The Court: All right. Speak a little louder. You can talk louder, Mr. Leo?

The Witness: Yes, sir.

A. (Continuing): The male voice: Remember we sat in the car on Powell and Vallejo Street. That was two days after he beat you up. I ask you, do you know what you are doing? I don't know what he will do. Vivian said Johnnie admitted he came and bought papers that I paid for. Did Johnnie

(Testimony of Francis Leo.)

sign any paper for the Immigration? Did you mention Levy?

Jean's voice: Immigration knew everything.

The male voice: Did Johnnie authorize Immigration to investigate Levy? How many times did you talk to Immigration?

Jean's voice: Twice, I think it was before Christmas. When did they tell you?

Male voice: Yesterday. They said you and Johnnie talked. Johnnie confessed. Did you sign anything?

Jean's voice: No.

Male voice: Then it is all Ah Loy's mother.

Q. (By Mr. Schnake): What voice was that?

A. Male voice: Then it is all Ah Loy's mother.

Q. Ah Loy, spelled A-h L-o-y?

A. Yes, sir.

Male voice: Did you say that Levy, me, you and Johnnie had a conference?

Jean's voice: We did have a get-together. [562]

Male voice: If Helen—and then here I couldn't quite catch whether it was Bob or Ma.

You, Johnnie, don't admit a thing. There is nothing they can do, five against one.

Jean's voice: Just supposing they can prove it?

Male voice: Let them try. Just remember that if you don't sign anything they can't prove a damn thing. They said I furnished a round-trip ticket for Ah Kee and expenses.

Q. Ah Kee, is that spelled A-h K-e-y or K-a-y?

A. Well, I have it in my notes as K-e-e.

Q. K-e-e. All right.

(Testimony of Francis Leo.)

A. Yes, sir. (Continuing): I admitted it, but as a loan, there was no note, that it was a Chinese custom. As a matter of fact, I said that he was a good employee and I gave him three months' leave.

Jean's voice: Aren't you supposed to know why he went?

Male voice: No, I don't—I told them I didn't ask people about their business.

Jean's voice: Is the loan supposed to be paid back?

Male voice: No, I said maybe, because I married his wife he was causing trouble to avoid payment.

Then I have the old lady's voice: Whatever you two have [563] said tell me and brother Wy so that we can all plan.

Q. I didn't get that, Mr. Leo.

A. This is the old lady speaking: Whatever you two have [563] said tell me and brother Wy so that we can all plan.

Male voice: Even though you did say it, if you didn't sign it you can deny it. They can't do a damned thing. If you admit everything you go to jail, Ma goes to jail, I go to jail, Helen gets deported, Johnnie goes to jail.

Again in this case here I have difficulty being certain as to whether it was "Ma goes to jail" or "Bob goes to jail." There is a close similarity of sound.

Q. Was that remark in English?

A. I believe it was in English, yes, sir.

Q. All right, go ahead.

(Testimony of Francis Leo.)

A. Jean's voice: How am I involved?

Male voice: For conspiracy.

Jean's voice: Levy, John, you and I were there. I said I wanted no part of it. Does it involve the Federal Government?

Male voice: If you agreed to the phony divorce, you are involved. Levy was the adviser, he would be involved, lose his license, pay a fine.

Jean's voice: You said if I didn't sign it, it would be all right.

Male voice: They can indict you before the Grand Jury. If they put you on the witness stand and ask you about Bick Wah and all the rest of it, what would you say?

Jean's voice: Is it worth it to keep it up? How long [564] will it go on?

Male voice: After five years.

Jean's voice: From when?

Male voice: From the time Helen came.

Jean's voice: What has Helen done for me that I have to lie for her?

Male voice: You are not lying for Helen, you lie for yourself, your husband, Levy, me and Ma. Helen will go to China and after one year can come back.

Jean's voice: Just suppose someone turns state's witness.

Male voice: It would just lighten the sentence. Helen would be deported. Johnnie would be deported.

Jean's voice: How did you meet Helen?

(Testimony of Francis Leo.)

Male voice: I was introduced by mail. Someone introduced us by mail. But let's discuss what could happen first. Johnnie conspired with me. He gets deported. You're a United States citizen, you can bring him back in one year. While he is over there you can send money to support him. It would be just like Helen and me, I go to jail for one year and pay a fine. Ma bought papers for Johnnie. Ma, the old lady, goes to jail, loses her citizenship and maybe gets deported. Levy loses his license, ruined his whole life. Helen would be the one to get off lightest. If you turn state's evidence you would get sixty days in jail. Who would [565] feed your kids then?

Jean's voice: Helen is the cause of it all.

Male voice: No, it started with the refugee paper investigation and Ah Loy's Ma spilled her guts.

Jean's voice: As I heard it there were two anonymous letters.

The old lady then asked: What is it all about?

The male voice: It was this way. Yee Hing Bow has a son Yee Yuen Foon who went to China, married, came to the United States and was divorced shortly after. This started the investigation. It was within the five-year period. I understand everything. You have questions. I will write a note for you to Jackson and he will explain it point by point.

Now, with regards to Levy. He was questioned for three hours. He was very mad because he was accused of being in on a conference at the store. You must have mentioned it.

(Testimony of Francis Leo.)

Jean's voice: No, it was about that divorce. I just said that we didn't know anybody in Reno and you had a personal friend who referred us to a lawyer.

Male voice: ——here they used a term that could mean either daughter-in-law or sister-in-law.

Q. This is a Chinese term?

A. Yes, sir. It is Yee So. Yee means second; the So could mean either daughter-in-law or sister-in-law. I don't know what she referred to. [566]

(Continuing): Second sister or daughter-in-law said she heard. Actually I don't see how she could have understood as she claims not to know English.

Jean's voice: She understands what she hears.

Male voice: No, it was all Ah Loy's mother. People say she got a dirty deal. I give her a hundred dollars a month alimony and the Jackson Street building. From the rent alone she gets an income of $300.00 a month. Lots of men would have taken a powder. On top of that I pay all her milk bills and eggs. I made a down payment on her house, ran to $3500.00.

Jean: Did you have her name taken from the Washington Street building?

Male voice: Naturally, it was a division of community property. She got the Jackson Street building.

The Old Lady's voice: The Washington Street building was mine. Brother Wy only managed it for me.

Q. Mr. Leo, you used the term Brother Wy. Is

(Testimony of Francis Leo.)

that a Chinese term that has a somewhat ambiguous meaning, or rather broad meaning?

A. Well, Wy is the name.

Q. Yes, Wy is the name, but this Brother——

A. This Brother part of it is a courtesy title given to a person whom you address as you would Mr. You address him as Brother, an elder brother, that is actually the translation, [567] elder brother.

Q. Go ahead.

A. Male voice: They went to Miss Logan and told her about the matter and asked Miss Logan over at the girl's school to recommend a lawyer. I had to pay $500.00 for her lawyer. She asked them what my income was and Loy told her my income was $700.00 a month net, that I was willing to pay $100.00 a month alimony plus the Jackson Street building, and Miss Logan told Ah Loy that her father was being quite generous.

The settlement was drawn up by her lawyers. I didn't have a damn thing to do with it. All I did was sign it.

Jean's voice: Did you tell second—here again it is sister-in-law or daughter-in-law—about the whole thing?

Male voice: She knew all about it. She said if Jean had come to me and said Kee and I are getting divorce papers so he can bring Bick Wah to the United States—so that he can—pardon me.

If Jean had come to me and said Kee and I are getting divorce papers so that he can bring Bick Wah to the United States, my heart would have

(Testimony of Francis Leo.)

been very sweet. I even told her when she comes plan to buy a two-story flat and since it wouldn't be practical for all of us to live together I planned to have each occupy one flat and we would then co-operate and try to get ahead.

This was before Johnnie went. She said no, that she had [568] taken enough. If that was what was going to happen she would move to the edge of town and live just as if she were entering a nunnery.

Male voice: I am not going to tell you what to say.

Q. Is that a continuation of the male voice?

A. Yes, sir.

Q. All right.

A. I am not going to tell you what to say, but you see Jackson and ask him everything. I will foot the bill. It will be best if you go with Kee. Anything you ask him—no—anything you want to know you ask him.

Then we have the old lady's voice: Yes, you go with Kee so that your testimony matches.

Jean's voice: Yin Toy told me.

Q. Y-i-n T-o-y? A. Yes, sir.

Jean's voice: Yin Toy told me to get an attorney, but we have so many expenses.

Male voice: Jackson is familiar with the whole case. His address is 580 Washington Street, Room 301. The best time to catch him is about 4:30. Will you go tomorrow?

Jean's voice: I don't know. I have to meet a lady neighbor.

(Testimony of Francis Leo.)

Male voice: The next time Immigration comes you tell them "I have told you all I know and said all I have said [569] the last time. I don't care to discuss this matter any more."

They may try to lure you into spilling your guts. Don't let them lure you into talking, don't let them get you mad. They said about a round-trip ticket and expenses. You must have told them. I admitted it, but I said that I advanced the money, that there was no note. I explained that he caused the trouble to avoid payment. In these things you must sound reasonable. I brought that in to detract from the question that they had in mind.

Did you mention that Johnnie is Ma's nephew?

Here we have the old lady's voice: Don't admit that he is my nephew, only that he is of the same clan. If you admit that it will ruin me at my age.

Following that, why, the party had evidently moved to the door, because I heard voices but I wasn't able to distinguish what was said. When I heard the door close Mr. Prather showed me his watch again and the time indicated on his watch was 4:36.

Q. Thank you.

Mr. Davis: No questions.

Mr. Burns: No questions.

(Witness excused.)

Mr. Schnake: Mr. Prather.

Mr. Burns: Can we see those notes?

Mr. Schnake: Mr. Leo, would you give those notes to them? [570]

Mr. Burns: Might they be marked for identification?

Mr. Schnake: It will be the Government's Exhibit next in order; like them in evidence?

The Court: It may be marked for identification; Exhibit D for identification.

(Thereupon, foregoing notes were marked for identification as Defendant's Exhibit D.)

E. T. PRATHER

a witness recalled to the stand. Previously sworn.

Further Redirect Examination

By Mr. Schnake:

Q. Mr. Prather, you have previously been sworn. Would you tell us whether or not on April 4, 1956, you went to the home of Jean Yee?

A. I did.

Q. What time did you arrive there?

A. Approximately 2:30 p.m.

Q. Did you go inside the house? A. I did.

Q. Would you tell us what transpired next?

Mr. Burns: Again make the same objection on behalf of the defendant Levy, if your Honor please.

Mr. Schnake: Your Honor, this is not a declaration, these are acts and the Lutwak Case held that——

The Court: Now, counsel, don't argue this matter. It [571] is going to be admitted for the same

(Testimony of E. T. Prather.)

reason, the same purpose as heretofore indicated. It is the act or declaration of a party to which this witness may testify. It is admitted for that purpose and no other, except as it may prove, if it does prove, the existence of the conspiracy.

A. I was with interpreter Francis Leo. We were invited inside the house by Jean Yee. At that time her son was there. She told me that she had received a phone call there was to be a meeting there and she was afraid. She wanted someone to be present during the meeting.

We arranged the furniture in the living room so that a soft sofa sat directly in front of a thin wooden door leading into a small bedroom. About that time her daughter came home.

I think the children had a glass of milk and some cookies. She took the children down the back steps into the garage and we heard a car leave. We went into the bedroom and locked the door, went in through a second door, locked that door, and sat there in chairs that had been provided for us.

We remained seated there for several minutes and we heard the car, we heard a car return, come into the garage, a person came up the back steps.

There was a knock on the door, and Jean said Bill Fong and the old lady, his mother, are out in front coming in.

I looked at my watch. It was 3:16 p.m. [572]

We heard persons enter the front door, apparently a man and a woman. There were three persons

(Testimony of E. T. Prather.)

in the living room engaged in a conversation after that.

Q. (By Mr. Schnake): Did you recognize the voice of the male? A. I did.

Q. Whose voice was it? A. William Fong.

Q. Had you just talked to him on the previous day? A. I talked to him the previous day.

Q. And the day before that?

A. Previous to that; yes, I had talked with him.

Q. Did you take notes during the following conversation? A. Yes; I did.

Q. Do you have those notes with you?

A. I do.

Q. Was this conversation partly in English and partly in Chinese? A. It was.

Q. Now, would you indicate as you relate this conversation where there were gaps in Chinese, which I presume you did not understand?

A. I do not speak Chinese. I would say that a little over half of the conversation was in Chinese. The part that I have here in English is almost verbatim. I had time to write [573] it down.

Q. All right. Would you state from your recollection of that conversation and from your notes what was said exactly to the best of your recollection?

A. There was some Chinese conversation, and then I heard Bill Fong say: One time I sat in a car with you.

There was additional Chinese conversation. Bill

(Testimony of E. T. Prather.)

Fong said: Jean, I told you that I can guarantee he will behave himself.

More Chinese conversation.

Bill Fong said: Vivian, you folks and Johnnie admitted that he came here illegally.

More Chinese conversation.

Bill Fong said: Did you discuss this divorce matter?

More Chinese.

Bill Fong: You never signed a statement.

Chinese.

Bill Fong said: If you, John, Helen, I and Bob do not admit anything, what can they do? Four or five against one. Let them prove it. How can they prove it.

That was followed by a Chinese conversation.

Bill Fong: Lemuel Chin brought the ticket to the store and Vivian saw it.

Chinese.

I admit I bought the ticket. [574]

Chinese.

That it was a loan.

Chinese.

You are not supposed to know what he took the trip for.

Chinese.

Bill Fong: No; that is his business. They asked me if I would make a written statement.

Chinese.

Jackson said no, you just tell them it is not necessary for you to make a statement.

(Testimony of E. T. Prather.)

There was more Chinese conversation.

Bill Fong said: Do not read statement, do not sign it.

Chinese.

You can deny everything when it comes to a showdown in court. You can say I did not say that, they can't prove a damned thing.

There was more conversation in Chinese.

Bill Fong said: You will go to jail, Bob will go to jail, Johnnie will go to jail, Helen will go to jail, I will go to jail

Jean said: I told Lee that the whole thing was illegal and that I wanted no part of it.

Bill Fong: Did you tell the Immigration that?

Chinese conversation.

Anyway, if your signed a paper—— [575]

Chinese.

Bill Fong said: Levy is the adviser. He told you what to do. He knew it was illegal, he will lose his license and go to jail. [575-A]

Chinese.

There was no written—this is by Bill Fong: There was no written agreement, but he was there and was the adviser. He is guilty, sure, he can go to jail.

Chinese conversation.

Bill Fong: Get a divorce so Johnny ~~can~~—get a divorce and go to China and marry Chin Bick Wah.

Chinese conversation.

Then by Jean: What if they prove perjury on me, then I will end up in jail. Is it worth it?

(Testimony of E. T. Prather.)

Jean again; after the Chinese conversation: This can go on for years.

Bill Fong: I don't care, if they don't bring charges within five years, it is up, anyway. Five years from the time Helen entered.

Chinese conversation.

Jean says: What has she done for me that I should lie for her?

Bill Fong: You are not lying for her, you are lying for us, your husband, Helen, me, Bob and mother.

Chinese conversation.

Jean says—in my notes I have "State's evidence." I believe Jean said: What if I turn State's evidence, what happens?

Bill answered: One, Helen will be deported to China, in [576] one year she can come back. Two, Johnny will be deported to China. Three, maybe a fine will be assessed because Helen is an alien.

Chinese conversation.

Bill Fong said: I was introduced by Helen—I was introduced to Helen by mail.

Chinese conversation.

Bill Fong said: Johnny conspired with me to bring Helen in. He will be deported, anyway.

Chinese conversation.

Then by Bill Fong: You are an American citizen; you can bring him back in one year. You can send money back there to support him.

Then continued by Bill Fong: I would go to jail and pay a fine for one year. Mama would go to

(Testimony of E. T. Prather.)

jail, Levy would pay a fine and go to jail. Helen would get off the lightest, the most easiest of all.

Q. Would you speak up, Mr. Prather? I don't think I am hearing you.

A. (Continuing): The last thing that Bill Fong said: Helen would get off the lightest, the most easiest of all, if you turn State's evidence.

Jean, in English: It burns me up.

Then a conversation in Chinese: They wanted to find out about—— [577]

A conversation in Chinese.

Then Bill Fong: They wanted to find out about Levy. I asked Jackson; he said no.

Then by Jean: Is it worth it?

By Bill Fong: They questioned Levy three hours yesterday. He would not admit anything at all.

Chinese conversation.

By Jean: You go to Levy for legal advice, you go to a doctor for medicine.

Conversation in Chinese.

By Bill Fong: You should not mention that we talked things over at the store.

Chinese conversation, the one word by Bill Fong "Levy," followed by a Chinese conversation.

I pay her $100.00 every damn month.

More Chinese.

Eventually we will clear.

More Chinese.

$800.00 or $500.00 still yours.

More Chinese; all this by Bill Fong.

(Testimony of E. T. Prather.)

Down Payment.

Chinese.

By Bill Fong: Community property.

More Chinese.

By Bill Fong: $500.00 for lawyer. She agreed to the [578] whole deal. She agreed to it all along.

Chinese.

By Bill Fong: She knew about it all along.

Chinese.

She will deny anything.

There was a telephone call at 1:20 p.m.

Chinese conversation.

After that, Jean returned. Jean: I don't know what you and Vivian and mother talked about.

Bill: Yes; but now you understand.

Chinese.

By Bill Fong: No matter what you want to ask, you ask Jackson, he will tell you. I will take care of the bill.

Chinese conversation.

By Bill Fong: Jackson is familiar with the case and he knows the whole thing. You go see him, 580 Washington Street. 580 Washington. Phone him up and make an appointment, anyway. You can get real advice from him. He is familiar with the case.

By Jean: Do you have to call and make an appointment?

Bill: Yes; it is best. Yukon 6-5459.

Chinese.

Then by Bill Fong: Don't say nothing no more.

(Testimony of E. T. Prather.)

Chinese.

By Bill Fong: I advanced him money and there was no note.

Chinese. [579]

By Bill Fong: When you try to explain things you have to talk so it is reasonable.

Q. What is that, I didn't hear it?

A. You have to talk so it it reasonable.

There was a Chinese conversation.

Next, Bill Fong said: Detract their mind.

Then there is a Chinese conversation.

Bill Fong said: I would not admit it.

Then Chinese conversation.

Somebody sent check to Reno to pay for it.

Followed by more Chinese conversation.

The front door closed; I looked at my watch; it was 4:36 p.m.

Mr. Schnake: That's all.

Mr. Davis: I have no question.

Mr. Burns: No questions, your Honor.

The Court: Step down.

(Witness excused.)

Mr. Schnake: That's all. The Government rests.

The Court: May I see counsel at the bench, please?

(Counsel conferring with the Court at the bench out of the hearing of the reporter.)

The Court: We will take a recess at this time until 9:30 tomorrow morning. As I indicated to

you, tomorrow we will not run after 1:00 o'clock, tomorrow, but we will start at [580] 9:30. You will remember the admonition heretofore given you about not discussing the case or forming or expressing an opinion thereon We will take a recess and you may leave now, until 9:30 tomorrow morning.

(Whereupon, the jury retires from the courtroom.)

The Court: All right.

Mr. Burns: At this time, on behalf of the Defendant Robert Leonard Levy, I will make a motion to strike in accordance with your Honor's ruling that such a motion could be made with reference to the testimony of Jonathan Yee in its entirety as it pertains to Mr. Levy, and likewise the testimony of Jean Yee, because that testimony consists, where it does refer to Mr. Levy, are nothing but the acts and declarations of a conspirator, and your Honor is familiar with the cases which hold that the acts and declarations of a co-conspirator are not admissible as against him, nor are they admissible to prove the conspiracy unless there is other independent evidence of the existence of the conspiracy.

On that ground I urge there is no such independent other evidence of the conspiracy as it is alleged against Mr. Levy; and on that ground urge that the motion to strike be granted on his behalf, and on the same ground, urge that a motion for a judgment of acquittal at the conclusion of the case in chief by the Government, that that motion for judgment of acquittal should be granted as to him. [581]

I would like to point out to your Honor a series of cases from the Ninth Circuit that recognize the rule that the existence of the conspiracy cannot be established against an alleged conspirator by evidence of the acts or declarations of his alleged co-conspirators done or made in his absence. I am referring to the case of Dolan versus the United States, 123 Fed. 52; Kuhn versus the United States, 26 Fed. 2nd 463.

The Court: I didn't get that first one.

Mr. Burns: Dolan versus the United States, 123 Fed. 2nd; Kuhn versus the United States, 26 Fed. 2nd 463; and Sugarman versus the United States, 35 Fed. 2nd 663.

I would like likewise to cite to your Honor a more recent case, but not from this Circuit, 198 Fed. 2nd 230.

Now, briefly running over the testimony, both Jonathan Yee and Jean Yee testified as to certain conversations at which Mr. Levy was present, and testified as to certain acts or declarations made by him in those conversations.

It seems to me that the gist of the cases that I have cited is to the effect that the conspiracy itself cannot be established by the acts or declarations of the conspirators, but that there has to be independent proof aside from those acts or declarations.

Now, I say in this case that there is no act, there is no evidence of the existence of a conspiracy alleged in this indictment as against the defendant Levy. There is no evidence of any marriage by him or divorce by him or immigration papers [582]

prepared by him or passport applications prepared by him. The only evidence is a letter which he gave to Mr. Jonathan Yee to take to Reno, Nevada. The fact that he received a fee back from the referral attorney in Reno, Nevada, and the fact that he had certain conversations.

But if we take out the conversations, which the Court says you have to, in order to establish the conspiracy independent of the declarations, then I say there is not sufficient evidence to take this case to the Jury, and on that basis we will submit the motion for judgment of acquittal on his behalf.

Mr. Davis: If the Court please, on behalf of the defendants Fong Wy Sum and Chin Bick Wah, I make a motion to strike all of the evidence which was admitted of any incidents prior to January 1, 1950, on the grounds that it is incompetent, irrelevant and immaterial, has no bearing on the issues of this case, and further, because it's prejudicial, because it charges a prior offense, and it fails to show any course or dealing or does nothing to prove the subsequent formation of a conspiracy—of the conspiracy charged, if said conspiracy exists.

And in the alternative, make a motion to strike such evidence as to Chin Bick Wah on the ground that it is the declarations and statements of a co-defendant prior to the formation of the conspiracy, which cannot be relied upon unless it is shown that the defendant sought to be charged had knowledge of the prior event or was criminally connected therewith. [583] That's acts and declarations up to

January 1, 1950, the date the conspiracy was charged.

I also make a motion to strike any declarations and statements of any of the defendants as being binding on the co-defendant after March 16, 1952, the date on which in my opinion——

The Court: You say after March 16?

Mr. Davis: After March 16, 1952, the date upon which the conspiracy terminated with the arrival of Chin Bick Wah in this country.

I make, also, a motion for judgment of acquittal.

Mr. Schnake: Taking first the motion to strike on the part of the defendant Levy as to all testimony of Jonathan Yee and Jean Yee where it refers to defendant Levy, I understood that was the first motion, that appears to be based upon the claim that the law requires you can't prove the conspiracy by any statements or declarations of the conspirators.

I think that that is not the law in this circuit, or in any other circuit, that the declarations in the formation of the conspiracy are, of course, admissible. It is actually a rare case where you have the perfect evidence of the conspiracy, that is, the statement of the agreement of it. So, that that evidence of the agreements is admissible; it is the very core of the case, which usually has to be proved—for lack of such evidence, has to be proved by circumstances. [584]

Now, even assuming that there were a proposition that aside from any statements or declarations of the conspirators, there had to be proof by independ-

ent evidence of the conspiracy, I think that this case abounds in such independent evidence in the timing and relationship of the various documents that were filed and the acts done.

I don't want to burden the Court with a recital of all the evidence in the case, but taking the most essential points, the divorce in Reno, Nevada, the living together of Jonathan and Jean Yee after the alleged divorce in Reno, Nevada, the appearance at the airport, going to Hong Kong, the conduct of the parties in Hong Kong, the conduct of the parties Fong and Levy, both, during the time that Yee was in Hong Kong, all show the conspiracy.

Taking the appearance at the airport in March of 1952, of the conduct of the alleged wife living separate and apart from her husband at the hotel of her aunt, being taken there by Fong, living together of Jean and Jonathan Yee immediately after his return in February of 1952 up to the time of the Seattle episode, the fact that Chin Bick Wah did not live with Jonathan Yee except for this 10-day Seattle period, the divorce of William Fong from his wife, and the relationship between William Fong and his wife over that period prior to the divorce, finally the divorce of Chin Bick Wah from Jonathan Yee, the living together in a state of concubinage, as stated was one [585] of the objects of the conspiracy, in the period from March 11, 1953, through October 1, 1953, and the appearance of Mr. Levy in all of the—rather in both the divorce of Johnny Yee and also the divorce of William Fong, and the appearance of Mr. Levy in various

of these meetings, which were not declarations, but which were actual acts of the conspirators, all of that proves that essential element of the conspiracy.

Of course, we have actually the sub-purpose, or the additional crime, which was committed, which was alleged in the indictment, and that is the false passport, which was an essential element to accomplishing the more important objective to the parties, of bringing the woman over.

As to that we have abundant evidence of the knowledge on the part of the defendant Fong Wy Sum of the falsity there, showing that one of the objects of the conspiracy was to secure this false passport for one who was not entitled to it, because he was not a citizen of the United States.

There again, I think a similar recital of all the circumstances are abundant evidence, independent of any declarations, of the existence of this conspiracy.

So that I think on that point we have proved it even within a rule which would exclude absolutely all declarations.

Now, I don't think that is the law, and those cases don't hold that the statements of the parties in the creation of the conspiracy are [586] insufficient.

Now, of course, you do have to have overt acts, and we have proven those overt acts.

I think the motion for acquittal and striking of the testimony of the witnesses Jean and Jonathan Yee is not well taken on that ground.

Now, as to the motion of the defendant Fong to

strike all evidence prior to January 1, 1950, I think as the evidence was received, your Honor passed upon each of those questions, and in certain cases certain evidence was allowed in and in other cases it was not.

I think that at this late date, to attempt to say all evidence of what occurred prior to 1950 is entirely improper, particularly when we consider in a conspiracy to have an object, there certainly must be a set of circumstances giving rise to the desire to have the conspiracy, and here the set of circumstances had to be shown over a considerable period of time in the past.

The relationship of Jonathan Yee to William Fong, which is, of course—makes two of the documents false on their face, had to be shown by evidence prior to 1950, as well as after that date. Also, the evidence as to the true name of Jonathan Yee and his true father, showing that he was not a citizen of the United States, that he was in fact an alien, and showing Fong's knowledge of it.

That is all evidence which is admissible against all of the [587] conspirators to show the circumstances and to show the relationship of the party at the time the conspiracy arose.

Now, as to the defendant Chin Bick Wah, Mr. Davis has moved to strike all declarations up to January 1, 1950, or all statements, I think are his exact words, up to January, 1950.

I think that is also improper, because each of those statements or occurrences was ruled on by the

Court as to its remoteness or its present admissibility to show the circumstances and the relationship as that evidence was offered.

As to the motion to strike all declarations after March 16, 1952, I think that the cases cited in the memorandum we submitted this morning discussing the general question of when a conspiracy comes to an end are applicable in this case, your Honor. I think that the law, as announced by the Supreme Court and announced in the Ninth Circuit is very clear, that although you cannot imply in every conspiracy a further conspiracy to conceal the evidence forever, because if that were done, the statute of limitations would never run on a conspiracy.

The Supreme Court and the Ninth Circuit have expressly stated that where it is part of the actual express agreement to conceal of what is one of the express objectives of the conspiracy, then evidence after the illegal entry is, of course, admissible, because the conspiracy is continuing.

I think that Moy case, cited in the Supreme Court, was one— [588] excuse me, in the Ninth Circuit—I am sorry, your Honor, that is not a Ninth Circuit case; that is an Eighth Circuit case; it is very much in point on that where the Court held that a conspiracy to bring Chinese illegally across the border did not end when the parties actually just made their entry, but it continued throughout all the period that would be necessary for concealment and for prevention of deportation.

Here we have exactly that situation, which is particularly applicable to the defendant Chin Bick

Wah.

The object of the conspiracy was not only to bring her here, but to keep her here. The purpose of having her as a concubine would be to no avail if she were married to Fong and then deported.

So, I think the declarations and statements that were offered that relate to acts done and statements made after March 16 are admissible. I think that the Court should have ruled all along as we urged, that where the statements were actually directed to that particular purpose of concealing the illegal status, that that testimony should have been allowed in its entirety as against all three conspirators.

The Court ruled otherwise. But I think at this time any further motions to strike evidence on that ground, are not well taken.

The Court: All right. The Court will take the motions under consideration. [589]

Adjourn until 9:30 tomorrow morning.

(Thereupon, an adjournment was taken until the hour of 9:30 o'clock a.m., on Friday, July 13, 1956.) [589-A]

Friday, July 13, 1956, 9:30 A.M.

(The following proceedings were had out of the presence of the jury.)

The Court: In response to the motions that were made last evening, the motions by Mr. Burns to strike the testimony of Jonathan Yee and Jean Yee may be denied.

The motion for judgment of acquittal on behalf

of the defendant Levy may be denied.

The motion made by Mr. Davis to strike all evidence of any incidents that took place prior to January 1, 1950, may be denied; and the motion on behalf of Chin Bick Wah to strike all evidence of incidents taking place after January 15, 1951, may be denied, together with the motion on behalf of both Chin Bick Wah and Fong for judgment of acquittal may be denied.

Mr. Davis: If the Court please, at this time, Mr. William Fong moves for permission to withdraw his former plea of not guilty and enter a plea of guilty to the counts——

The Court: All right, step up.

Fong Wy Sum, do you desire to withdraw the plea of not guilty heretofore entered in this matter?

The Defendant Fong: Yes, sir.

The Court: All right, permission may be granted.

Fong Wy Sum, to the charge of conspiracy as charged in [591] the first count of the indictment, what is your plea, guilty or not guilty?

The Defendant Fong: Guilty.

The Court: To the charge of violation of Section 1324 of Title 18 of the United States Code, as charged in the third count of the indictment, what is your plea, guilty or not guilty?

The Defendant Fong: Guilty.

The Cort: And to the charge of a violation of Section 1542, Title 18, United States Code, as charged in the fourth count of the indictment, what is your plea, guilty or not guilty?

The Defendant Fong: Guilty.

The Court: And to the charge contained in the fifth count of the indictment, to wit, a violation of Section 1546 of Title 18, United States Code, what is your plea, guilty or not guilty?

The Defendant Fong: Guilty.

Mr. Davis: I will ask at this time, your Honor, the matter be referred to the Probation Officer for a pre-sentence report.

The Court: The matter will be referred to the Probation Officer and continued until July 27, for report and sentence.

Mr. Davis: May the defendant be permitted to remain on bail pending the report? [592]

Mr. Schnake: Your Honor, the Government would oppose such a motion. I call the Court's attention to the closely related case of Fong Yin Toy, set forth on the bulletin board here. Fong Yin Toy, immediately upon indictment became a fugitive from justice and it is believed that he is in the British colony of Hong Kong. In a case of this nature where this defendant has close cultural and language ties with Hong Kong and China where he has the means by which he might support himself outside the United States, we feel there is always a possibility of flight. On that ground we would oppose any motion to continue the defendant at liberty on bail.

Mr. Davis: If the Court please, we had this same argument before another judge on the question of fixing bail in this case. The bail was fixed high.

The Court: What is the bail?

Mr. Davis: $5,000.00.

The Court: That is what I see on the indictment.

Mr. Davis: There is a clear distinction, your Honor, between the man that Mr. Schnake refers to and this defendant. The man who Mr. Schnake referred to is an elderly gentleman, Chinese, the same as this defendant, but he had no ties in this country. This defendant has his mother and entire family here, nieces and nephews who have come from China. He is married to Chin Bick Wah who is obviously still on trial and in this country. He has a business here, he has other property [593] here, everything that he has is in this country. He has been here since 1915, your Honor, and to think of him as suddenly picking up and leaving——

The Court: You say he has been here since when?

Mr. Davis: 1915. He is an Americanized Chinese, your Honor. He has absolutely no ties in China. He doesn't even write the language well. I don't know how well he speaks it. There has been some question about that, as far as real Chinese is concerned. He has been in business here for many years. He has business interests here, just as a practical matter, he couldn't possibly pick up. I don't think there is any slightest chance in the world of this defendant ever fleeing the jurisdiction of the Court. He could have done it long before this without going to the expense and everything else of a trial.

Mr. Schnake: On the point of family, your Honor, I would only point out that this defendant's only family at the present time, for any practical

purposes, would be his wife Chin Bick Wah, who is an alien subject to deportation and for whom there is a high degree of risk of flight herself, so that the possibility of both of them departing is not at all unsubstantial. We requested a fairly substantial bail on her, and I would think that this development would definitely have some bearing on that.

I will also point out that in another case, Mr. Fong Yin [594] Toy, closely related to this case, was also a resident of this country since 1916, the same period of time, so the length of residence in the United States does not appear to be the sole factor as to whether there would be flight.

I would also call your attention to the case of Mr. Chin Bock Hing, who was a long-time resident and who had tremendous holdings in this country, but who, nevertheless, took flight with $60,000.00 bail outstanding.

Mr. Davis: If the Court please, that case has come up to haunt everyone who defends a Chinese client, or any Chinese client that appears in these courts. To my knowledge he is the first Chinese defendant in many, many years, and the only Chinese defendant to flee the jurisdiction of the Court.

To my mind, that is an entirely different situation there because he was, according to all reports, an extremely wealthy man, and with his means and wealth he could flee to some other jurisdiction and apparently support himself and live as well as he could here.

Now, this is an entirely different situation. In

the first place, in answer to Mr. Schnake's remark about family, that might be true as far as an American family is concerned, but actually this man has very, very close association with his own family, not his wife, not his married family, but with his mother. She is still here with three or four nieces and nephews over here and whom he is supporting and whose [595] cases are going through the process now with Immigration. He is not a wealthy man by any means. He doesn't have the type of money that would permit him to go and live at all in any other jurisdiction. He is a man of moderate means, who has a going business which he has built up over the years, a milk business, a milk route and owns some other property, but his business connections are such that he couldn't possibly leave without sacrificing. He'd leave town penniless, your Honor.

The Court: Well, before Mr. Schnake made his last statement mentioning Chin Bock Hing, there was running through my mind that defendant and while, as you say, it may live to haunt other similar defendants in a similar position, as a famous American once said, "The only light that I have to guide my feet is the lamp of experience." And with that experience of Chin Bock Hing, I am going to have to deny the request that he remain on bail. I do it reluctantly, but with that experience behind us, counsel, we would look a little foolish, I think, if this happens in this case again, and for that reason I am going to have to deny the motion for release on bail pending the report of the Probation Officer.

Mr. Davis: May I renew this motion if I can supply your Honor with additional facts and information concerning this case?

The Court: I will listen to anything you have to say; [596] yes, because, as I say, I do it reluctantly, but it is because of the experience that this Court has had under a somewhat similar situation.

The defendant may be remanded to the custody of the Marshal.

Anything further, gentlemen?

Bring in the jury.

(The following proceedings were had in the presence of the jury.)

The Court: The jury is present.

Ladies and gentlemen of the jury, we are starting somewhat later than the time I asked you to come here this morning, but there has been a reason for that. This morning, and a few moments ago, in the absence of the jury, the defendant Fong Wy Sum, also known as William W. Fong, changed his plea of not guilty to guilty to count one, which is the count charging conspiracy, and guilty to counts three, four and five of the indictment, so that you are required to give no further consideration to the question of the guilt of the defendant Fong Wy Sum.

There remains in the indictment, however, the charge of conspiracy as contained in the first count of the indictment against the defendant Chin Bick Wah and the defendant Robert Leonard Levy, and

count six in the indictment, which is a charge solely against the defendant Chin Bick Wah. [597]

* * *

Mr. Burns: Might I inquire whether the government has rested?

Mr. Schnake: There are no further witnesses.

The Court: All right. Proceed.

Mr. Burns: At this time, on behalf of the defendant Robert Levy, we will renew the motion that was made at the conclusion of the government case, and without making a lengthy argument, just so the record will show that the motion was made.

The Court: The motion will be taken under submission at this time.

Mr. Davis: I renew the motion made on behalf of the defendants Fong and Chin Bick Wah, at this time limited to [738] Chin Bick Wah.

The Court: It may be taken under submission.

(Whereupon, counsel summed up to the jury.)

(After the arguments of counsel, the following proceedings were had.)

The Court: We will take the adjournment at this time until 9:45 tomorrow morning. You are still under the admonition not to discuss the case nor form or express an opinion about it until it is submitted to you. 9:45 tomorrow morning. And if the jury will leave, I want to see counsel about certain motions. You may now leave.

(Whereupon, the jury retired from the court-room.)

(The following proceedings were had out of the presence of the jury.)

The Court: In the presence of the jury, each counsel made a statement that they desired to renew certain motions. I think you should do that for the purpose of the record at this time.

Mr. Burns: On behalf of the defendant Levy, at this time, if your Honor please, I will renew the motion for judgment of acquittal in accordance with the rules of Federal Criminal Procedure, and I will cite to your Honor again the same authorities and statement that I heretofore made, requesting the motions be granted.

Mr. Davis: I renew the motion originally made for [739] motion of acquittal on behalf of William Fong and Chin Bick Wah, this time limited to Chin Bick Wah, and on the same grounds as raised previously.

The Court: I thought you should make the statement in detail for the record rather than as it was made before.

All right. We will take a recess at this time until 9:45 tomorrow morning.

(Whereupon, an adjournment was taken to 9:45 a.m. tomorrow, Tuesday, July 17, [740] 1956.)

Tuesday, July 17, 1956, 9:45 A.M.

Instructions to the Jury

The Court: The jury is present.

Ladies and gentlemen, it is the duty of the Court to instruct the jury as to the law governing their deliberations in this case; and it is the jury's duty, unaided by any suggestion from the Court, to pass upon and decide all questions of fact. Neither the jury nor the judge may trespass upon the province of the other. You should follow the law as I state it to be. However, with questions of fact, the weight of the evidence and the credit that you should give to any witness sworn in the case, the Court has nothing to do. These are matters within your province and which you as jurors must determine for yourselves. Your power of judging of the effect of evidence, however, is not arbitrary, but should be exercised with legal discretion and in accordance with the rules of evidence.

You are not to consider for any purpose any evidence which has, by the order of the Court, been stricken out or the offer of any evidence which has not been admitted by the Court.

The opening or other statements of counsel and the arguments of counsel and any purported statement of fact contained in any question asked by counsel of any witness are not evidence in the case, and any statements made by counsel, either during the trial or during the argument, which are not supported by the evidence or which are inconsistent with my instructions as to the law, are to be disre-

garded by you. This does not apply to stipulations of fact by counsel, which stipulations of fact must be treated by you as facts proven in the case.

From time to time counsel upon either side have interposed objections to evidence. I charge you that counsel on each side not only had the right but had the duty to make any and all objections which they deemed advisable or appropriate, and no inference or presumption can or should be indulged in by you by reason of the interposition of such objections. Counsel have a right, and indeed a duty, to argue the case to you. It is your duty to listen and be attentive to and to give weight and consideration to the arguments of counsel. However, in their comments upon the facts of the case, if you find that there is any discrepancy between what they stated to you to be the facts of the case and the words that have come from the mouths of the witnesses, you must disregard, if there is such conflict, the statement as to the facts made by the attorneys and consider only the evidence given by the witnesses in this regard.

The Court in these instructions in no manner intends you to understand that he is expressing an opinion as to the guilt or innocence of the defendant, or upon the weight of the [742] evidence, or as to the truth or falsity of any witness sworn in the case, or as to any inference you should draw from any of the testimony, or as to whether any of the alleged facts is or is not proven.

If the Court has, at any time during the trial, asked any question, made any ruling or used any

language that has seemed to you to indicate the opinion of the Court as to any question of fact, you must not be influenced thereby, but must determine for yourselves all questions of fact without regard to any opinion you may suppose the Court may have or entertain.

If, in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me and none must be inferred by you. All principles of law herein given are of equal importance. For that reason you are not to single out any certain sentence or any individual point and instruction and ignore the others, but you are to consider all the instructions as a whole, and treat each in the light of all the others.

Wherever words are used in these instructions in the masculine gender, you will understand that the masculine includes the feminine.

Neither the prosecution nor the defense is required to call as its own witness all persons who are shown to be present or who may appear to have some knowledge of the [743] matters here on trial.

In determining the guilt or innocence of the defendants, you should consider all of the evidence in the case, including both the evidence introduced on behalf of the prosecution and the evidence introduced on behalf of the defendants. You have no right to speculate as to what any person not called as a witness might testify, if called, nor as to what any document not admitted in evidence would disclose if it were admitted, nor as to what the answer

would be to any question not permitted by the Court to be answered.

The defendants are on trial only upon the charges contained in the indictment, and in determining those issues, that is, the guilt or innocence of the defendants upon those charges, you are not to consider whether or not they may or may not be guilty of some charge not embraced in the indictment.

Certain evidence has been admitted with certain limitations as to its competency and effect, and certain evidence was admitted as against one person and not against all persons. You will be especially careful in weighing and considering such evidence, not to consider it for any purpose except for that which it was admitted, nor in determining the guilt or innocence of the defendant against whom such testimony was not admitted.

The indictment in a criminal case and each count thereof [744] is a mere formal accusation by the grand jury against the defendants. It is not to be considered by you as evidence against a defendant, and it does not raise any presumption or inference of the guilt of any defendant. In arriving at a verdict in this case, the jury should not be influenced by the mere fact that an indictment has been filed against the defendants.

Now, the indictment in this case is somewhat lengthy; it has not been read to you in detail before, and I am going to read most of it to you at this time.

In the first count the grand jury charges that:

"1. Commencing on or about January 1, 1950, and continuously thereafter up to and including the date of the return of this indictment, in the City and County of San Francisco, Northern District of California; in the City of Reno, Nevada; and in the British Crown Colony of Hong Kong * * * Fong Wy Sum, also known as William W. Fong; Chin Bick Wah, also known as Helen B. Fong * * *; and Robert Leonard Levy, hereinafter referred to as the defendants, did wilfully, knowingly and unlawfully conspire, combine, confederate and agree with each other and with Fong Yee Shee, also known as Yee Shee; Fong Kam Quon, also known as Benton K. Fong; Ruby Fong Yee; Chin Yood Sen, also known as Chin Jung; Jonathan [745] K. Yee, also known as Yee How Kee, also known as Yee Yuen Foon; and Jean Jow Yee, and with other persons to the grand jury unknown, all of which persons, named and unknown, other than the defendants themselves, will hereinafter be referred to as the co-conspirators, said co-conspirators being not named as defendants nor indicted herein, * * *"

To go back to get the context, the grand jury alleged that the defendants did conspire with those persons:

"(a) To commit offenses against the United States, to wit:

"(1) The crime of wilfully and knowingly bringing into the United States an alien not

lawfully entitled to enter or reside therein, in violation of the United States Code * * *:

* * *

"The crime of entry by an alien into the United States by fraud, misrepresentations and concealment of material facts in violation of * * *" United States Code;

"The crime of wilfully and knowingly making and using false statements, in violation of * * *" United States Code;

"The crime of wilfully and knowingly making false statements in an application for a passport with intent to induce or secure the issuance thereof, in violation of * * *" United States Code; [746]

"The crime of knowingly using, possessing, obtaining and receiving an Immigration visa knowing it to have been procured by false claims and statements and otherwise procured by fraud, in violation of * * *" United States Code; and

"The crime of knowingly making under oath false statements in applications, affidavits and other documents required by Immigration laws and regulations as prescribed thereunder, in violation of * * *" United States Code.

"(b)" They are charged with conspiring "to defraud the United States of and concerning:

"(1) Its governmental function and right to administer the immigration laws of the United

States and regulations promulgated pursuant thereto, particularly those laws and regulations governing the admission, exclusion and registration of aliens;

"(2) Its governmental function and right to administer the Foreign Service of the United States Department of State and the Immigration and Naturalization Service of the United States Department of Justice; and its governmental function and right to have the business and affairs of the Foreign Service and the Immigration and Naturalization Service and the consideration, administration investigation, and [747] disposition of matters affecting and affected by the Foreign Service and the Immigration and Naturalization Service, conducted in its behalf free from fraud, deceit, misrepresentation and concealment of material facts."

The indictment then goes on to allege that:

"In the year 1939 Fong Wy Sum and his mother, Fong Yee Shee, conspired and agreed with Jonathan K. Yee, a Chinese alien, to assist him in effecting an allegal entry into the United States by purchasing for Jonathan K. Yee, a fictitious identity as a derivative citizen of the United States. In consideration thereof, Jonathan K. Yee agreed to pay to Fong Wy Sum the amount of $2,000 for the purchase of the fictitious identity and the expenses of passage to the United States. Pursuant to the agreement, Jonathan K. Yee entered the United

States on December 24, 1939 under the fictitious identity of Yee Yuen Foon and in the years thereafter paid Fong Wy Sum amounts in excess of $2,000, as demanded by Fong Wy Sum.

"In the year 1948 Fong Wy Sum, then residing in the United States, began corresponding with Chin Bick Wah, a Chinese alien, residing in Hong Kong, and sent her money and gifts. He thereafter offered [748] to bring her to the United States to become his concubine or 'No. 2 wife.'

"In the year 1949 Fong Wy Sum attempted to obtain an Immigration visa for Chin Bick Wah to enter the United States as a student nurse. In the years 1949 and 1950, Fong Wy Sum attempted to purchase a fictitious identity for Chin Bick Wah as a derivative citizen."

I might state there a derivative citizen means one who is a child of a citizen of the United States, although that person was born in a foreign country.

The indictment further alleges that:

"During the period from October 1, 1950, through April 3, 1951, Fong Wy Sum, Robert Leonard Levy and Fong Yee Shee induced and procured Jonathan K. Yee and his wife, Jean Jow Yee, to participate in the conspiracy to effect the illegal entry of Chin Bick Wah by repeated urgings, blandishments, and pressures, including representations that Jonathan K. Yee was obligated and required to enter the con-

spiracy because of the fact that Jonathan K. Yee's entry into the United States had been effected by Fong Wy Sum and Fong Yee Shee.

"The unlawful combination, conspiracy, confederation and agreement was to be accomplished by the [749] following means and methods:

"(a) Jonathan K. Yee counselled and assisted by Robert Leonard Levy, an attorney, would secure a sham divorce from Jean Jow Yee;

"(b) Jonathan K. Yee would file a passport application in which he and Fong Wy Sum would falsely state that Jonathan K. Yee was a citizen of the United States and that Jonathan K. Yee desired to go to Hong Kong to visit relatives, and in which Fong Wy Sum would falsely state that he was not related to Jonathan K. Yee;

"(c) Jonathan K. Yee would go to Hong Kong and participate in a sham ceremony of marriage with Chin Bick Wah;

"(d) Jonathan K. Yee would file with the United States Department of State a petition for issuance of Immigration visa for Chin Bick Wah, a Chinese alien, in which petition Jonathan K. Yee, Fong Wy Sum, and Fong Kim Quon would falsely state that Jonathan K. Yee was a citizen of the United States, that he was the son of Yee Hing Bow and that he was married to Chin Bick Wah.

"(e) Chin Bick Wah would file with the United States Departmgent of State an application for Immigration visa and alien registration in which [750] she would falsely state that she was married to Jonathan K. Yee, a citizen of the United States; that her passage to the United States was paid for by her husband, Jonathan K. Yee; and that she intended to join her husband in the United States;

"(f) Fong Wy Sum would pay all expenses involved, including attorney's fees, witness fees, travel expenses, and living expenses for Jonathan K. Yee in Hong Kong;

"(g) Chin Bick Wah would use the Immigration visa to enter into the United States to become Fong Wy Sum's concubine or 'No. 2 wife.';

"(h) Jonathan K. Yee would return to the United States and resume living with Jean Jow Yee as her husband;

"(i) Chin Bick Wah would secure a divorce from Jonathan K. Yee and Jonathan K. Yee would remarry Jean Jow Yee;

"(j) In the event of questioning by Immigration officers, the defendants and conspirators would counsel together and agree upon false testimony designed to prevent discovery of the conspiracy and the deportation of Chin Bick Wah."

Thereafter, in the indictment there is set forth some twenty alleged overt acts that were done in

furtherance of [751] the conspiracy. I am not going to read those acts to you, but I refer you to the indictment for a further statement of those details.

Upon their arraignment, the defendants entered their pleas of not guilty to each of the offenses charged against such defendant in the indictment. These pleas put in issue every material allegation of the indictment and placed the burden upon and made it the duty of the prosecution, before a conviction could be had of the crime charged against such defendants in any count thereof, to establish to the exclusion of all reasonable doubt every fact essential to a conviction of the crime charged in such count of the indictment.

In every crime or public offense there must exist a union or joint operation of act and intent. The intent or intention is manifested by the circumstances connected with the offense and the sound mind and discretion of the person accused of the offense.

In the case of certain crimes, it is necessary that in addition to the intended act which characterizes the offense, the act must be accompanied by specific or particular intent without which such a crime may not be committed. Thus, in the crime charged in the first count of the indictment, the necessary element to be proven is the existence in the mind of a defendant of the specific intent to commit an offense against the United States, or to defraud the [752] United States, as alleged in the indictment; and unless such an intent so exists, the crime charged in the first count is not committed.

I neglected, in reading the indictment to you, to read the sixth count of the indictment. There are the second, third, fourth and fifth counts set forth in the indictment which do not concern you because they have been disposed of by either the dismissal by the United States attorney of the second count and the plea of guilty of the defendant Fong Wy Sum to the third, fourth and fifth counts. However, there is a sixth count in the indictment which I did not read, and I will now read it to you.

"The grand jury further charges that:

"On or about March 5, 1952, at Hong Kong * * *, Chin Bick Wah * * * did knowingly and wilfully make under oath before a vice consul of the United States, in an application for Immigration visa and alien registration, a document required by the Immigration laws and regulations prescribed thereunder statements that she was married to Jonathan K. Yee, that her passage to the United States was paid for by her husband, Jonathan K. Yee, and that she intended to join her husband, Jonathan K. Yee, in the United States, which statements were false, as Chin Bick Wah then and there well knew." [753]

Further, upon the question of intent, in arriving at the intent or state of mind, it is impossible to look into the mind of a person to see what its workings were at the time alleged. Hence, from necessity, the law provides that the intent with which an act

is done may be arrived at from a consideration of all the circumstances surrounding the act.

Now, as indicated, the first count of the indictment charges three defendants: Fong Wy Sum, also known as William W. Fong; Chin Bick Wah, and Robert Leonard Levy, with the crime of conspiracy. Section 371 of Title 18 of the United States Code provides as follows:

> "If two or more persons conspire either to commit any offense against the United States or to defraud the United States, or any agency thereof, in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be guilty of a public offense."

The crime charged in this count, to wit, that of conspiracy, is a separate and distinct offense from the offenses that are charged in the other counts of the indictment.

Now, what is a conspiracy? I will define it for you. A conspiracy is a partnership in criminal purposes. It is an agreement to commit an unlawful act. The gist of the crime is its combination of minds. The success or failure of the conspiracy is entirely immaterial, but before a [754] defendant may be found guilty of the charge, it must appear beyond a reasonable doubt that a conspiracy was formed as alleged in the indictment and that such defendant was an active party thereto.

In order to establish the charge of conspiracy, it is necessary, first, that the conspiracy or agreement

to commit an offense against the United States, or to defraud the United States, as alleged in the indictment, be established; and secondly, to prove further that one or more of the persons engaged in the conspiracy had committed one or more of the overt acts alleged in the indictment to effect the object of the conspiracy.

It is not necessary, to constitute a conspiracy, that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be and the details of the plan by means of which the unlawful plan or combination was to be effected. It is sufficient that two or more persons in any manner or through any contrivance positively or tacitly come to a mutual understanding to accomplish a common and unlawful design.

In other words, where an unlawful end is sought to be effected and two or more persons actuated by the common purpose of accomplishing that end, work together in any way [755] in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy.

As I have indicated, no formal agreement is essential to the formation of a conspiracy. They do not all have to get together and say, "Now, we are going to form a conspiracy." That is not necessary, for the agreement may be shown if there is a concert of action, all of the parties working together understandingly with a single design and for the accomplishment of a common purpose.

It is not necessary that the participation of an accused person should be shown by direct evidence. The connection may be inferred from such facts and circumstances in evidence as legitimately tend to sustain the inference. Indeed, often, if not generally, direct proof of a criminal conspiracy is not available, and it will be developed and disclosed only by the bringing together of all of the circumstances; commission of the overt acts may constitute the best proof of the conspiracy, and such evidence is often used for such purpose.

It is not sufficient to warrant a verdict of guilty merely that some persons had an understanding between one another to violate some law or to defraud the United States. It is further necessary, and it has to be shown beyond a reasonable doubt, that some overt act was done by one of the conspirators for the purpose of carrying out that conspiracy. [756]

Now, an overt act means simply an open act. It means something that is done in the open, as distinguished from the secret agreement that is entered into, or understanding that is had. Some act has to be done, and when you do such an act you have to step out of the solitude and secrecy of the agreement that has been entered into and do something to further it.

Now, the overt act in itself need not be criminal in nature, if considered separately and apart from the conspiracy. It may be a perfectly innocent act, such as walking across the street or driving an automobile or telephoning. For example, and only by way of example, if two or more persons enter into

a conspiracy to perform an unlawful act or to violate the law, one of them might, in furtherance of the conspiracy, go from a telephone office to a railroad station; he might go from his home to the office of some official of the government; he might telephone to somebody. Each of those acts in themselves might be simple and innocuous and perfectly lawful. But if the act was done for the purpose of carrying out any step in furtherance of the unlawful conspiracy, then it is an overt act and may be considered in determining whether or not the defendants are guilty or not guilty of the charge against them in the indictment.

Each party to the conspiracy must have knowledge of the illegal agreement and must be actuated by an intent to promote [757] the common design. If persons pursue by their acts the same unlawful object, one performing one and the second another act, all with a view of the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a conspiracy to effect that object.

Co-operation, however, in some form must be shown. There must be an intentional participation in the transaction with a view and purpose to further the common design, and if a person understanding the unlawful character of a transaction, encourages, advises or in any manner with a purpose to forward the enterprise or scheme, assists in its prosecution, he becomes a conspirator.

The evidence of the acts or statements by any defendant which have been admitted against such

defendant as admissions tending to show his or her guilt must not be considered as against any other defendant in the case. I have already given you some instructions along that line during the course of the trial. I want to caution you, however, particularly that when you are determining, as against any particular defendant, whether or not a conspiracy existed or whether he or she was a party to it, if one did exist, you must not consider and you must put out of your minds all evidence of acts done or declarations made by any co-conspirator out of the presence of the defendant whose guilt is under consideration, unless such acts or declarations were authorized by that defendant. [758]. In other words, in respect to the guilt of any particular defendant, the existence of the conspiracy charged in the indictment and that defendant's participation therein, must be established by evidence independent of the acts and declarations of any alleged co-conspirator done out of the presence of the defendant whose guilt is under consideration, unless the acts or declarations were authorized by such defendant.

Of course, once it has been shown beyond a reasonable doubt that any defendant was a party to the conspiracy, he or she is responsible and must be held accountable for every act or declaration of each member of the conspiracy done or made in furtherance of the conspiracy and while the conspiracy continues and before it is terminated. Once the conspiracy is established, and during the existence thereof, as between the parties to that conspiracy,

an overt act of one conspirator in furtherance of the object of the conspiracy is an overt act of all the co-conspirators without any new agreement directed specifically to that act, and each co-conspirator is legally responsible for any act of a co-conspirator that follows incidentally in the execution of the common design as one of its probable and natural consequences, even though it was not intended as a part of the original plan, and even though such defendant was not present at the time of the commission of such act. [759]

On the other hand, after a conspiracy has come to an end, either by the accomplishment of its object, or by the parties abandoning it, evidence of the acts or declarations thereafter made by any of the co-conspirators can only be considered as against the person making the acts or declarations. The declaration or act of a conspirator not in the execution of the common design is not evidence against any of the parties other than the one making such declaration.

Any statement or declaration of an alleged co-conspirator, in order to be binding upon his alleged co-conspirator, must not only have been made during the existence of the conspiracy, but it must likewise have been made in furtherance of its object.

It is not necessary for you to find that the defendants conspired to violate all of the laws set forth in the indictment and to defraud the United States. Conspiracy to commit any one of the crimes set forth, or to defraud the United States is sufficient if you are satisfied to a legal degree of its existence.

Where a person co-operates in a lawful undertaking, he is not liable criminally for the unlawful acts of a companion in an attempt to carry out the common purpose where there was no previous understanding or agreement which would constitute conspiracy and make the act of one the act of all. With this principle in mind, you are to examine the [760] evidence concerning the acts and conduct of the defendant Robert Leonard Levy. You are instructed that as an attorney at law he had the right to refer on the request of Jonathan K. Yee, or upon the request of someone acting in his behalf, the matter of the domestic difficulties of that co-conspirator to Attorney Rutherford in Reno, Nevada, and likewise to receive a referral fee in relation thereto. The mere fact of such referral or of correspondence or consultation thereupon is not in and of itself sufficient to show that such was done in furtherance of the conspiracy alleged in the indictment. The evidence, if any, must establish beyond a reasonable doubt and to a moral certainty that such acts on the part of Robert Leonard Levy were done with the intent and design to accomplish the unlawful objective alleged in the indictment.

In considering the charge of conspiracy contained in the first count of the indictment, I instruct you that the defendants are not on trial for doing any of the overt acts alleged in this count of the indictment; unless you find to a moral certainty and beyond a reasonable doubt that defendants did so conspire as charged in the first count of the indictment; that defendants did so conspire as charged in

the first count of the indictment, you must return a verdict finding the defendants not guilty of such count, even though you should also find that one or more of the defendants did one or more [761] of the overt acts set forth in the indictment.

The term conspiracy to defraud the United States as used in the statute under consideration is broad enough to include any unlawful impairing, obstruction or defeating of the lawful function of any department of the government. The Immigration and Naturalization Service and the Foreign Service exercise functions within the purview of the statute. It follows that a conspiracy which is calculated to obstruct or impair the efficiency or destroy the value of the operations of the services would be to defraud the United States. It is not necessary to prove any actual financial or property loss under the statute.

The indictment charges the conspirators with the offense of wilfully and knowingly bringing into the United States by fraud, misrepresentations and concealment of material facts, Chin Bick Wah. Entry of Chin Bick Wah was secured under the provisions of the United States laws which allow the entry of the wife of a citizen of the United States. The statute requires the filing of a petition which states (1) if the petitioner is a citizen by birth, the date and place of birth; (2) if the petitioner is a naturalized citizen, the date and place of his admission to citizenship and the number of his certificate, if any; (3) the degree of relationship of the immigrant for whom such petition is made.

This petition must be verified and accompanied by

verified [762] statements of two or more representative citizens of the United States to whom the petitioner has been personally known; that the statements made in the petition are true.

Where neither of the parties intend to enter into the marriage relationship, as it is commonly understood, and two persons enter into a marriage solely for the purpose of facilitating an alien's entry into this country, the alien spouse is not entitled to enter the United States pursuant to the immigration laws of the United States.

The defendant Robert Leonard Levy is charged only in the first count of this indictment. In determining the guilt or innocence of this defendant upon this count, you are not to consider for any purpose evidence produced by the prosecution in support of the allegations of the other counts of this indictment in which Robert Leonard Levy is not named as a defendant.

In essence, the first count of this indictment charges that the defendant Robert Leonard Levy and Chin Bick Wah conspired with other named defendants and co-conspirators to violate the laws of and to defraud the United States by effecting or assisting the entry into the United States of the person Chin Bick Wah.

In your deliberations you are to consider the guilt or innocence of each defendant separately. In considering the evidence against each defendant, if any, you must be satisfied [763] that the evidence convinces you beyond a reasonable doubt and to a moral certainty of the following:

(1) That a conspiracy existed to effect the objectives set forth in the indictment.

(2) That such defendant had knowledge of the existence of this conspiracy and of its objective.

(3) That with such knowledge and with the specific intent, as I have heretofore defined that term, he or she joined such conspiracy.

(4) That such defendant wilfully did the things he or she did as disclosed by the evidence in order to effect and to further the unlawful purpose of the conspiracy.

If you are not convinced beyond a reasonable doubt and to a moral certainty that each of these facts has been proven against such defendant, you must acquit such defendant, notwithstanding your verdict as to the other defendant.

Each defendant in this case is entitled to and must receive your determination of whether or not he or she was a member of an alleged conspiracy, if any existed, and as to each defendant and you must determine whether or not he or she was a conspirator as alleged by deciding whether or not he or she wilfully, intentionally and knowingly joined with others in an agreement or understanding having the elements of a criminal conspiracy as I have stated them to you.

Even though you may believe that a conspiracy was formed [764] between certain persons mentioned in the indictment and certain overt acts were done in furtherance thereof, yet you cannot find either defendant now before you guilty of the crime of conspiracy unless you further believe beyond a

reasonable doubt that the defendant whom you find guilty became, with knowledge of the illegal agreement, a member of the conspiracy and was actuated by an intent to promote the common design, and also that one of the overt acts alleged in the indictment was committed.

Under the charge made in the first count of the indictment, the conspiracy constitutes the offense and it must be made to appear from the evidence beyond a reasonable doubt that before a defendant can be convicted that such defendant was a party to the conspiracy and unlawful agreement charged and that he or she continued to be up until the time that the overt acts were committed, if the evidence shows there were any such overt acts.

The mere fact the defendant may have engaged in the performance of any of the acts charged in the indictment as overt acts would not authorize a conviction by reason of that fact alone, but it is necessary that such defendant was a party to the conspiracy charged before such defendant's guilt is made out.

Evidence that a defendant was in the company of or associated with one or more other persons alleged or proved [765] to have been members of a criminal conspiracy is not in and of itself alone sufficient to prove that such defendant was a member of the alleged conspiracy.

The evidence in proof of a conspiracy may be circumstantial. Where circumstantial evidence is relied upon to establish the conspiracy or any other

essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy, or the facts sought to be proved, but such circumstances must be inconsistent with any other rational conclusion and inconsistent with said defendant's innocence.

It is unimportant when or where the conspiracy was formed or where or when it originated. It is sufficient to prove that during its existence and to accomplish the objects thereof at least one of the overt acts specified in the indictment was committed. It is not necessary that all the overt acts stated in the indictment be proved by the prosecution. Other overt acts than those specified in the indictment may be proved in support of the indictment provided, however, that all twelve of the jurors find that there is also proof of at least one of the overt acts specified in the indictment.

All of the conspirators need not join in the commission of an overt act or, as I stated, if one of the conspirators commits an overt act, it becomes the overt act of all of the conspirators. [766]

The essence of a charge of conspiracy is unlawful agreement and combination on the part of the conspirators. As I have stated, there must be an intentional participation in the transaction with a view to a common design and purpose before a party can be guilty of a conspiracy.

No evidence of an act or declaration of an alleged conspirator shall be binding upon or considered against any other alleged conspirator unless and until, independently and without the aid of such evi-

dence a conspiracy, as alleged, and of which both said persons are members, has been proved to have been in existence at the time of such act or declaration, and no alleged conspirator shall be held criminally responsible as such for any act of another alleged conspirator when the only substantial evidence purporting to indicate an agreement between them is the evidence of the acts and declarations of the latter.

In the sixth count of this indictment the defendant Chin Bick Wah is charged with the offense of knowingly and wilfully making a false statement in an application for an Immigration visa and alien registration in violation of Sections 1546 of Title 18, United States Code, the pertinent portions of which provide as follows:

> "Whoever knowingly makes under oath any false statement with respect to a material fact in an application * * * required by the immigration laws or [767] regulations prescribed thereunder * * * shall be guilty of a public offense."

In connection with the charge contained in the sixth count of the indictment against Chin Bick Wah whose conduct is alleged to have taken place at Hong Kong, the United States Code provides as follows:

> "The trial of all offenses begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district,

shall be in the district where the offender is found or into which he is first brought."

As you know, during the trial one of the three defendants named in the indictment, Fong Wy Sum, also known as William W. Fong, changed his plea from not guilty to guilty to the charge of conspiracy as contained in the first count of the indictment, and to that of guilty to the charges contained in counts three, four and five of the indictment. I charge you that in determining the guilt or innocence of the defendant Chin Bick Wah or Robert Leonard Levy to the charge of conspiracy contained in the first count of the indictment and the guilt or innocence of the defendant Chin Bick Wah, the charge contained in the sixth count of the indictment, you must not consider for any purpose the fact that Fong Wy Sum has pleaded guilty to the charges against him in the indictment. The guilt or innocence of each of the defendants Chin Bick [768] Wah and Robert Leonard Levy must be determined independently of any conduct of Fong Wy Sum in pleading guilty to the charges in the indictment.

A defendant in a criminal action is not required to prove his innocence, but he is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal, and if the evidence can reasonably be accounted for upon a theory which would admit of a defendant's innocence, he should not be convicted. This presumption of innocence goes with the defendant all through the

case until you have arrived at a verdict. But the effect of this presumption of innocence is only to place upon the government the burden of proving a defendant guilty beyond a reasonable doubt.

In common parlance a reasonable doubt is just what the term implies. It means a doubt that is based or founded upon reason, upon the thinking processes of the mind. It does not mean every conceivable kind of a doubt, it does not mean a doubt that is imaginary or speculative or fanciful, nor is it a doubt that may be founded upon suspicion, surmise or conjecture. It means an honest doubt that appeals to reason and as I have said, it is based upon reason.

Reasonable doubt has been defined as follows: It is not a mere possible doubt, because everything relating to human [769] affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that stage of the case which, after the entire comparison, consideration of all of the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

The law does not require demonstration, that is, such a degree of proof as excluding every possibility of error produces absolute certainty, because such proof is rarely possible. Moral certainty only is required, or that degree of proof which convinces the mind and directs and satisfies the conscience of those who are bound to act conscientiously upon it.

Two classes of evidence are recognized and ad-

mitted in courts of justice, upon either or both of which, if adequately convincing, juries may lawfully find an accused guilty of crime. One is direct evidence and the other is circumstantial evidence. Direct evidence of the commission of the crime consists of the testimony of every witness who, with any of his own physical senses, perceived any of the conduct constituting the crime and which testimony relates what was thus perceived. All other evidence admitted in the trial is circumstantial, and insofar as it shows any acts, declarations, conditions or other circumstances tending to prove or disprove the crime in question, or tending to connect or not [770] connect a defendant with a commission of such a crime, it may be considered by you in arriving at a verdict.

The law makes no distinction between circumstantial evidence and direct evidence as to the degree of proof required for conviction, but respects each for such convincing force as it may carry and accepts each as a reasonable method of proof. Either will support a verdict of guilty if it carries the convincing quality required by law as stated in these instructions.

If the evidence in a criminal case as to any particular count is susceptible of two constructions or interpretations, each of which appears to you to be reasonable and one of which points to the guilt of the defendant and the other to his or her innocence, it is your duty under the law to adopt that interpretation which will admit of a defendant's innocence and reject that which points to his guilt. You

will notice that this rule applies only when both of two possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other to be unreasonable, it would be your duty to adhere to the reasonable deduction and to reject the unreasonable, bearing in mind, however, that even if the reasonable deduction points to a defendant's guilt the entire proof must carry the convincing force required by law to support a verdict of guilt. [771]

If two reasonable inferences, one of guilt and one of innocence, may be drawn from a chain of circumstances, then a defendant cannot be convicted thereon, but all that is required to convict is this: If the testimony in the case is sufficient to convince the jury beyond a reasonable doubt and to a moral certainty that a defendant did commit the crime charged, then it is the duty of the jury to convict, although the facts may be surrounded in some degree by a possible or fanciful doubt, surmise or conjecture not arising from a consideration of the evidence; but if a reasonable explanation or construction compatible with the innocence of a defendant may be drawn from such evidence, then the jury must adopt the interpretation which will admit of a defendant's innocence. Mere suspicion, no matter how strong it may be, cannot justify a jury in convicting a defendant of the crime charged against such defendant.

The jury are the sole and exclusive judges of the effect and value of the evidence addressed to them

and of the credibility of the witnesses who have testified in the case.

There are a few standards or rules by which you can measure the testimony of a witness and evaluate it and determine whether or not you want to believe it or how much of it you want to believe. The character of the witnesses, as shown by the evidence, should be taken into consideration for the purpose of determining their credibility, whether they have [772] spoken the truth. The jury may scrutinize the manner of the witnesses while on the stand and may consider their relation to the case, if any, and also their degree of intelligence.

A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by his interest in the case, if any, or by his bias or prejudice, if any, or by the character of his testimony, or by contradictory evidence. A witness may be impeached by contradictory evidence or by evidence that on some former occasion he made false statements, or made statements or conducted himself in a manner inconsistent with his present testimony as to any matter material to the cause on trial. A witness wilfully false in one material part of his testimony is to be distrusted in others. The jury may reject the whole testimony of a witness who has wilfully sworn falsely as to a material point. If you are convinced that a witness has stated what was untrue as to a material point, not as the result of a mistake or inadvertence, but wilfully and with a design to deceive, then you may

treat all of his or her testimony with distrust and suspicion and reject all unless you shall be convinced that he or she has in other particulars sworn to the truth.

You may also consider the manner a witness may be affected by the results of your verdict and what that witness [773] may gain or lose by your verdict. You may also consider the extent to which he or she may be corroborated or contradicted by other evidence, and of course, finally, any matter in general which you contend reasonably sheds light upon the credibility of a witness may be considered by you.

Whether or not you believe any particular witness who has testified in this case and the weight that is to be attached to his testimony is a matter for your judgment entirely. It is your duty to consider the testimony of the witness, to weigh it, to analyze it and to carefully scrutinize it. You should take into consideration whether the testimony of the witness is reasonable or unreasonable. You have a right to compare the statements of the witness on the one hand with the actions and conduct of the witness upon the other hand. In other words, you apply to each one of these witnesses, including a defendant who appeared here, the same rules which you apply in your business affairs in arriving at a conclusion as to whether a person has told you the truth. That is within your province entirely.

You are not bound to decide in conformity with the testimony of any number of witnesses which does not produce conviction in your mind against a less number or against a presumption or other evi-

dence which appeals to your mind with more convincing force. This rule of law does not mean you are at liberty to disregard the testimony of the greater [774] number of witnesses merely from caprice or prejudice or from a desire to favor one side as against the other. It does mean you are not to decide an issue by the simple process of counting the number of witnesses who have testified upon the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

You are instructed that every person of legal responsibility who voluntarily co-operates with or aids or assists or advises or encourages another in the commission of a crime is an accomplice, without regard to the degree of his or her guilt. An accomplice is defined to be one concerned with others in the commission of a crime. In this case the witnesses Jonathan Yee and Jean Yee, are, by their own admission on the witness stand, accomplices as I have defined that term to you. It is for you to determine, as a question of fact in this case, whether or not any other witness was an accomplice. It is a settled rule in this country that even accomplices in the commission of a crime are competent witnesses, and that the Government has the right to use them as such. It is the duty of the Court to admit their testimony, and that of the jury to consider it.

The testimony of accomplices, however, is always to be received with caution and weighed and scrutinized with great care, and the jury should not rely upon it unsupported unless [775] it produces in

their minds a most positive conviction of its truth. If it does, the jury should act upon it.

The failure of any defendant to take the witness stand and testify in his or her own behalf does not create any presumption against that defendant. The jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendant, nor should this fact enter into the discussions or deliberations of the jury in any manner.

In deciding whether or not to testify, a defendant may choose to rely upon the state of the evidence, upon the failure, if any, of the people to prove every essential element of the crime charged against such defendant, and no lack of testimony upon a defendant's part will supply a failure of proof by the people so as to support by itself a finding against such defendant upon any such essential element.

In this case one defendant has offered himself as a witness and testified before you. Having done so, you should weigh the testimony of such defendant by the same rules as you would weigh the testimony of any other witness.

Each count set forth in the indictment charges a separate and distinct offense. You must consider the evidence applicable to each offense as though it were the only accusation before you for consideration, and you must state your finding as to each count uninfluenced by the mere fact that your verdict as to any other count is in favor of or [776] against a defendant.

A defendant may be convicted or acquitted upon

more than one count, depending upon the evidence and the weight you give it under the Court's instructions. It requires the unanimous vote of all twelve jurors to convict or acquit a defendant upon each count charged against such defendant.

In arriving at a verdict in this case, the subject of penalty or punishment is not to be discussed or considered by you, and must not in any way affect your decision as to the guilt or innocence of the defendant. It is not the function of the jury to determine whether a defendant should or should not be punished for any conduct. It is solely the function of the jury to determine whether a defendant is or is not guilty of the charge set forth against such defendant in the indictment.

As jurors, you are expected to use in the determination of this case the same common sense that you use in your everyday affairs. Jurors are impanelled for the purpose of agreeing upon verdicts if they can conscientiously do so. They are admonished at each recess of the Court not to form an opinion as to the merits of the case until it shall be finally submitted to them, and when it is so submitted it is the duty of the jurors to deliberate and consult together with a view of reaching an agreement if they can conscientiously do so without violence to their individual understanding [777] of the evidence and the instructions of the Court. It is true that each juror must decide the case for himself. Yet a jury should do so only after a consideration of the case with the other jurors, and a juror should not hesitate to change his views or opinions of the

case when convinced they are erroneous, even though when so doing he defers to the views or opinions of others. It is your duty to carefully deliberate and to agree upon a verdict if you can conscientiously do so, but you are not called upon to surrender your conscientious opinion for the mere purpose of arriving at a verdict.

You will bear in mind that you are here for the purpose of trying the issues of fact that are presented by the allegations in the indictment filed by the Grand Jury and the defendants' please thereto. You should perform your duty uninfluenced by pity for the defendants, or by passion or prejudice on account of the nature of the charge against them. You are to be governed, therefore, solely by the evidence introduced in this trial and the law as given to you by the Court. The law will not permit jurors to be governed by mere sentiment, conjecture, sympathy, passion or prejudice.

The importance of your duties requires that you consider the right of the people of the United States to have the laws properly executed, and that it is with you, citizens selected from the District, that finally rests the duty of determining [778] the guilt or innocence of those accused of crime. You should also ever keep in mind the importance to the accused of the result of your deliberations, and be just to them as well as to the people of the United States. Both the public and the defendant have a right to demand, and they do so demand and expect, that you will carefully and dispassionately weigh and

consider the evidence and the law of the case and give each your conscientious judgment, and that you will reach a verdict that will be just to both sides, regardless of what the consequences may be.

The Court is permitting the jury to take with it to the jury room the indictment in this case. I do so, however, with the caution and admonition that the indictment is not to be considered by the jury as any evidence against either defendant. The indictment is simply the formal charge made by the Government and must be considered by the jury in that light and in no other light. In other words, the indictment is being given you for the purpose of informing you more at length as to the precise charges that are made.

Counsel, I am about to conclude my instructions. Do you wish, in the absence of the jury, to indicate any exceptions to the instructions of the Court?

Mr. Burns: On behalf of defendant Levy, none, your Honor.

Mr. Davis: I wish to indicate one exception, your Honor, but for the convenience of the Court and jury I can refer to [779] it by number rather than have the jury go out.

The Court: All right.

Mr. Davis: I wish to note an exception to the Court's failure to give defendant Chin Bick Wah's requested instruction No. 20.

The Court: The instructions are completed, ladies and gentlemen, and the case is about to be submitted to you for decision.

When you retire to the jury room to deliberate,

you will select one of your number to act as foreman and such person shall preside over your deliberations, will sign such verdicts as you may agree to, and such person will represent you as your spokesman in the further conduct of the case in this court. The foreman should permit a full and free discussion of the case in the jury room by the jurors.

For your convenience there have been prepared certain forms of verdict. In reference to the first count of the indictment I will read you a form of verdict, and it applies to the defendant Levy. Omitting title of the Court and cause.

> "We, the jury, find the defendant Robert Leonard Levy, (blank) of conspiracy as charged in the first count of the indictment."

Blank line for the signature of the foreman. If your verdict is that the defendant is guilty of that [780] count, the foreman will write the word "guilty" in the blank space provided and will sign the verdict. If your verdict is that the defendant is not guilty, the foreman will write the words "not guilty" in the blank space provided and will sign the verdict as foreman.

A similar form of verdict is given you as to the defendant Chin Bick Wah, which reads as follows:

> "We, the jury, find the defendant Chin Bick Wah (Blank) of conspiracy as charged in the first count of the indictment."

Blank line for the signature of the foreman. Likewise, if you determine that that defendant is guilty,

the word "guilty" will be inserted in the blank space, and if your determination is that such defendant is not guilty, the words "not guilty" would be put in the blank space and the foreman will sign the verdict.

As to the sixth count of the indictment I will give you one form of verdict which applies only to the defendant Chin Bick Wah.

> "We, the jury, find the defendant Chin Bick Wah (Blank) as charged in the sixth count of the indictment."

Blank line for the signature of the foreman. Likewise, the appropriate word "guilty" or "not guilty" will be placed in the blank space by the foreman and it will be signed by the [781] foreman. As indicated earlier, your verdict, of course, must be unanimous upon each count. In the event you desire to examine any of the exhibits in the case, if you will notify the court officer, they will be delivered to you in the jury room.

The twelve jurors will now retire to the jury room. The two alternate jurors will remain in the jury box, please. You may now retire.

> (Whereupon at 10:55 a.m. the jury retires to deliberate.)

The Court: Mrs. King and Mrs. Berg, you have sat here patiently during the trial of this case and have performed a very valuable service by your presence. It was the estimate of counsel, when we started the case, that the case would take between

two and three weeks for trial. If any of the twelve jurors had become ill or for any cause could not continue, unless we had alternate jurors, the case would have had to be retried. Fortunately in this case all the original twelve jurors have been here until the conclusion of the case.

I wish to thank you for the attention and the time you have taken from your affairs to serve as alternate jurors. You have been spared the responsibility of making a decision in this case, but in every other respect you have functioned as jurors in the case. I wish to thank you very much for [782] your service, and you may now be excused and discharged.

Counsel stipulate that if the jury desires to see the exhibits that they may be delivered to the jury by the court officer without further order of the Court. It is my recollection there were only two exhibits that were marked for identification that were not admitted in evidence. One was Exhibit 13 on the part of the Government, which was a card, and one was Exhibit D for the defendant, which were the notes of Francis Leo.

Mr. Burns: On behalf of defendant Levy we will stipulate for the record.

Mr. Davis: So stipulated.

The Court: All other exhibits have been admitted in evidence.

Mr. Schnake: So stipulated.

(Thereupon at 11:58 a.m. the Court was in recess.)

(At 5:58 p.m. the following proceedings were had in the presence of the jury.)

The Court: Let the record show the defendants are present with their counsel.

Ladies and gentlemen, I have been handed a note by Mr. Holcenberg. You are the foreman, are you?

The Foreman: Yes, your Honor.

The Court: Which reads as follows: "The jury would [783] like to have read from the transcript the testimony of Jean Yee in respect to the meetings prior to the divorce discussing the divorce and whether Mr. Levy was present. Signed I. Holcenberg, Foreman."

The difficulty of reading testimony is the difficulty of pinpointing the particular questions that might be asked concerning a certain subject. For that reason it is necessary to read rather extensively in the record in order that the entire subject may be covered. I have discussed this matter with counsel and we agreed upon certain limitations, but it will be rather a long reading.

So, Mr. Reporter, you proceed with the testimony of Jean Yee starting on Wednesday afternoon.

(Whereupon the testimony of Jean Yee was read from pages 376 to 401, 421 to 423 on direct examination and from page 490 to 494 on cross-examination.)

The Court: It is the recollection of counsel that no further testimony of the subject was given which you requested in this note:

Is there anything further the jury desires to hear?

You may now retire and deliberate further upon your verdict.

(Whereupon at 6:57 p.m. the jury retires from the courtroom.)

(At 10:19 p.m. the jury returns to the [784] courtroom.)

The Court: Let the record show the defendants are present, the jury is present, and the defendants' counsel are present.

Ladies and gentlemen, have you agreed upon a verdict? Mr. Holcenberg, you are the foreman?

The Foreman: We have agreed on two counts.

The Court: Now, have you agreed upon a verdict as to either defendant?

The Foreman: Yes, your Honor, we have.

The Court: What you mean is you have agreed upon a verdict as to one defendant but not as to the other?

The Foreman: That's true.

The Court: Do you think if there was any further deliberation that there would be any reasonable probability of your agreeing upon a verdict as to the other defendant?

The Foreman: I don't think so, your Honor.

The Court: All right, you may be seated, Mr. Holcenberg.

Mr. Pehlman, do you believe that after further consideration there is any reasonable probability as to agreeing to a verdict as to the other defendant?

Mr. Pehlman: No, sir.

The Court: You don't think further deliberation would do any good?

Mr. Pehlman: No, sir. [785]

The Court: Miss Jones, how do you feel about it?

Miss Jones: No, your Honor, I don't think so.

The Court: Mrs. Harvey, how do you feel about it?

Mrs. Harvey: Well, I say the same thing; we seem to be deadlocked, so we can't change it.

The Court: You don't believe you could agree upon a verdict if you deliberated further.

Mrs. Neilsen, how do you feel about it?

Mrs. Neilsen: I don't think so.

The Court: Mrs. Sigalle, do you believe there is any reasonable probability of agreeing upon a verdict as to the other defendant if you deliberate further?

Mrs. Sigalle: It appears there is not.

The Court: Do you believe there is any probability—I am asking for your individual opinion.

Mrs. Signalle: I wouldn't know how to answer, your Honor.

The Court: I am just asking for your opinion as to whether you believe there is any probability, rea-

sonable probability of the jury agreeing if they should deliberate further.

Mrs. Signalle: No, I do not.

The Court: Mrs. Duggan, how do you feel about it?

Mrs. Duggan: I don't believe any further deliberation would help any.

The Court: Mr. Donaldson, how do you feel about it? [786]

Mr. Donaldson: I don't feel any further deliberation would do it.

The Court: Mrs. Whiteside, how do you feel about it?

Mrs. Whiteside: I don't think there would be any use for further deliberation.

The Court: Mrs. Cornwall?

Mrs. Cornwall: I don't think so.

The Court: Is there anyone—Miss Ward, how do you feel about it?

Miss Ward: No, there is no possibility.

The Court: Mr. Loudermilk, how do you feel about it?

Mr. Loudermilk: No, your Honor.

The Court: Has the foreman signed the verdict to which you have agreed?

The Foreman: I have, your Honor.

The Court: All right, you may deliver that verdict to the court officer, please.

Mr. Clerk, read the verdicts of the jury omitting the title of the Court and cause, and ascertain whether those are their verdicts.

The Clerk: Ladies and gentlemen of the jury, hearken unto your verdict as it shall stand recorded.

"We, the jury, find the defendant Chin Bick Wah guilty of conspiracy as charged in the first count of the indictment." [787]

So say you all?

"We, the jury, find the defendant Chin Bick Wah guilty as charged in the sixth count of the indictment."

So say you all?

The Court: The verdicts may be recorded, and it appearing to the Court that there is no reasonable probability of the jury agreeing upon a verdict as to the other defendant if they deliberate further, this jury may now be discharged.

I realize that you have had a long day and a long seven days of trial, and I appreciate very much the time and attention that you have given the case, and you are discharged with the thanks of the Court.

You may now retire.

(Whereupon the jury retires from the court-room.)

Mr. Davis: If the Court please, I intend to ask at a later date to make a motion for a new trial, ask that the matter be referred to the Probation Officer at a date set for sentence, and I would ask that the defendant be permitted to remain on bail pending the report.

The Court: You say you do desire——

Mr. Davis: Just a moment, Mr. Burns just called to my attention that my client can't understand me, your Honor.

Mr. Schnake: I will stipulate that one of the members [788] of the family may act as interpreter for the purpose of stating to the defendant the results of the verdict.

The Court: You may use such interpreter as you desire, Mr. Davis.

Will you explain to the defendant that the jury has found the defendant Chin Bick Wah guilty of conspiracy as charged in the first count of the indictment and guilty of the charge against the defendant as charged in the sixth count of the indictment? Will you explain that to her? I think she understands it right.

(The defendant instructed in Chinese the remarks of the Court.)

The Court: Will you explain that counsel has just requested that the matter be referred to the Probation Officer, and you stated your desire to make a motion for a new trial. When do you desire to make that?

Mr. Davis: Oh, within next—maybe Thursday, your Honor.

The Court: Thursday. Well, all right, I will continue the matter until next Thursday then for further proceedings, and in the meantime the matter may be referred to the Probation Officer, and the United States Attorney, will you advise the Pro-

bation Officer that the matter has been referred to him tomorrow morning?

Mr. Schnake: I will, your Honor.

The Court: So that that time may be used in making such [789] investigation as may be necessary.

You were about to say something further, Mr. Davis. I think you were going to make another motion.

Mr. Davis: I was making a motion that the defendant be permitted to remain on bail pending a report of the Probation Officer, and in support of that, your Honor, I might say this: It seems to me her case is entirely different than that of her husband's. Her situation is different. She is deportable in any event; no matter what happened in this case she was deportable. She is deportable now on two grounds. Her only hope, if she has any, is to await the sentence of this Court and then be deported and an attempt to come back as the wife of a citizen, so that for her to leave now would just destroy every hope that she possibly has or could have, and I think that any possibility of her not appearing to protect her rights by being sentenced by this Court and then leaving here voluntarily or by the deportation proceedings, would just be so remote as to be practically inconceivable, because I know that she is married to William Fong and the only hope that she has is to try and leave and get permission to come back; whereas, if she left without appearing for the processes of this Court, obviously she never could come back.

The Court: Well, by reason of the lateness of the hour I will permit the defendant to remain on bail until the next [790] calling of the case, which will be Thursday, but at that time I will take a further look at what we are going to do then, Mr. Davis, but by reason of the fact that it is now pretty late and arrangements might be difficult, I will permit the defendant to remain on bail until next Thursday and continue the matter until Thursday.

You mean Thursday of this week?

Mr. Davis: Yes, your Honor.

The Court: Until Thursday, July 19 at 9:30 a.m. for further proceedings upon sentence and motion for new trial.

Mr. Davis: Thank you, your Honor.

The Court: All right.

Mr. Burns: On behalf of defendant Levy, if your Honor please, your Honor took under submission the motion for judgment of acquittal, and at some time convenient to your Honor, and I might suggest the same date you fixed for the further hearing of the defendant Chin Bick Wah, we would like to argue that motion further, if your Honor would care to hear argument for a decision at that time.

The Court: All right, I will put that on the calendar for Thursday at 9:30 also, Thursday, July 19.

Mr. Burns: Thank you.

(Whereupon hearing upon motions and judgment was adjourned until Thursday, July 19, 1956, at 9:30 a.m.) [791]

Thursday, July 19, 1956—9:30 A.M.

The Clerk: United States vs. Wah and Levy.

Mr. Burns: Ready for the defendant Levy.

Mr. Davis: Ready for the defendant Chin Bick Wah.

The Court: Proceed with the defendant Wah.

MOTIONS ON BEHALF OF WAH

Mr. Davis: If the Court please, on behalf of defendant Wah, your Honor has under submission a motion for judgment notwithstanding the verdict. My position in that is, your Honor, that the record indicates, as far as I can determine, that the defendant Wah and Jonathan Yee were actually married in Hong Kong. It is my position that as a matter of law the jury cannot find that this was a sham marriage, and unless they can, as under the Lutwak case, that she was married and she was entitled to execute the application for a visa as stating that she was, and in my opinion, despite the verdict of the jury that the facts are insufficient to prove that she is guilty of the offense charged in the indictment.

The Court: This is in support of your motion for judgment notwithstanding the verdict. You mentioned making a motion for a new trial also, Mr. Davis.

Mr. Davis: Yes, your Honor. Well, if that first motion is denied, I make a motion for a new trial on the same basis, that the evidence is insufficient to establish the fact that a crime was committed in

this case and that the case should [792] be retried under appropriate instructions to that effect.

The Court: Motion for judgment notwithsfanding the verdict may be denied and the motion for a new trial may be denied.

Mr. Davis: On the matter of sentence, your Honor, I have already asked it be referred to the Probation Officer. Does your Honor intend to pass judgment today or to continue it?

The Court: No, I will continue it until the 27th of July, which is, I believe, the date the Fong matter is on the calendar. It may be continued until July 27 for sentence.

Mr. Davis: At this time, your Honor, I renew my motion made previously that the defendant Wah be permitted to remain on bail pending the report of the Probation Officer. There are two thoughts on that. The first is that she doesn't speak English and her incarceration would be more difficult for her than for a person who did speak English.

Secondly, I have no hesitancy in stating that I do not believe that it would be possible for her to leave because of the fact that from an immigration standpoint her only hope is to depart this country, after whatever judgment is passed in this case, and to try to get back in, and because she has to leave, entirely irrespective of what occurs in this case, because her entry is illegal because Yee was not a citizen. She is fully aware of that, and so is her husband, [793] Fong, and they know that if there is any possibility of her getting back it would only

be if she remained here under the order of this Court.

In addition, your Honor, Mr. Fong gave me a letter today, this morning, and asked me to give it to your Honor. The letter states that the defendant Wah is pregnant. I checked on that, because I told Mr. Fong that I didn't want anything stated to your Honor which was not true; and he said as a matter of fact it is uncertain, that the doctor is not sure, but he thinks there is reason to believe she is, and he can't say definitely that she is or is not.

The Court: Mr. Davis, as I indicated the other night, the sole reason that the defendant was not placed in custody at that time was by reason of the lateness of the hour, and I believe this defendant should be in custody. I am going to have to make that order. The defendant may be remanded to the custody of the Marshal and the matter continued until July 27, 9:30 a.m.

MOTIONS ON BEHALF OF LEVY

Mr. Burns: On behalf of the defendant Levy, your Honor, at this time we will renew and argue the motion for a judgment of acquittal under Rule 29B, the provisions of which your Honor is familiar, which provide that when the motion is made and taken under submission, as your Honor did, at the conclusion of the case in its entirety, that the motion may be renewed after the jury has failed to reach a verdict. [794]

Now, I believe that the function of the Court in passing upon the motion after the jury has failed

to reach a verdict is somewhat different than passing upon such a motion after there has been an adverse verdict against the defendant. I would cite to your Honor in that connection a Federal District Court case of fairly recent date, United States against Maghinang, 111 Federal Supplement 760. In that case there was a prosecution for having possession of marijuana cigarettes. I have the case here if your Honor would care to take it.

The Court: Do you want to use it?

Mr. Burns: No, I don't need to.

The Court: All right.

Mr. Burns: It is where it is marked, your Honor.

In that case there was an indictment for possession of marijuana cigarettes which were found in the defendant's automobile, and he was prosecuted under the statutes providing that he didn't have the proper stamps and the proper forms to have possession. The jury disagreed and the announcement was that they had failed to reach a verdict and were evenly divided six to six. The Court upon the renewal of the motion for judgment of acquittal granted the motion because he held that the defendant's conduct was as consistent with innocence as with guilt and that the Government had failed to prove one of the essential elements of the crime: that was [795] the possession of the marijuana, notwithstanding that they were found in the defendant's automobile. It was the contention of the defendant that they did not belong to him but belonged to someone else. The Court said that was true, the cigarettes did belong to someone, but it

hadn't been established by the sufficient amount of evidence that they were his.

Now, I believe the facts in that case appear very much stronger against the defendant there than the facts in this case appear against the defendant Levy in here. I believe that the Government failed to prove knowledge on the part of defendant Levy that there was an agreement between William Fong, Jean Yee and Jonathan Yee to secure a sham divorce.

Whatever the defendant did in connection with the divorce matter he did, I believe the evidence reveals, in good faith, and that whatever acts he undertook are as consistent with his innocence as they are with his guilt, and of course if that is the situation, then the Court should grant the motion.

There is no evidence of the allegations that are in the indictment that he persuaded those two to get a divorce, that he used inducements or blandishments, which is the language of the indictment. The evidence is to the contrary. The evidence showed that first of all Jonathan Yee was compelled to marry Jean Yee, and that they had a long history of [796] domestic discord, and your Honor will recall that on cross-examination Jonathan Yee said that when he testified in the District Court of Nevada that he wanted to get a divorce and he intended to get a divorce. I believe that the allegations of the indictment as against the defendant Levy have not been shown, and that whatever conduct he engaged in was as consistent with innocence as with guilt.

You will recall that the jury had reread the testimony of Jean Yee concerning certain conversations at which she claimed the defendant Levy was present. The first conversation she said that he did not say anything, or that he did not say much, but she did not tell the jury or ourselves what, if anything, he did say.

At the second conversation she said Mr. Levy stated, "I am a lawyer, know what is right, know what is wrong."

And the third conversation, if it occurred, was that this was a federal matter and that the stories should be kept together.

As I say, his acts are consistent with his innocence. Certainly if he was engaged in a conspiracy and arranged a sham divorce he wouldn't have created the evidence which is found in Exhibit 3, which are the letters of introduction of April 10 and the letter of transmittal of the power of attorney of April 17. So I say that all of his acts are as consistent with innocence and therefore the judgment should [797] be granted.

For what it is worth, my opinion is that the jury was strongly influenced in the mathematical division by a conversation of William Fong on April 4, 1956, which was testified to by Jean Yee and also by the agents who were hidden so that they could not observe it; although your Honor instructed the jury that it was not admitted against Levy, I believe that it had a strong effect. Your Honor is aware of the fact that once a bell is rung it can't be unrung. I claim that the case against Mr. Levy

is filled with reasonable doubt and the motion for judgment of acquittal should be granted.

Mr. Schnake: Your Honor, on the question of the posture of the case at the time this motion came on for ruling, I would call the Court's attention to the fact that at the close of the Government's evidence a motion for acquittal was made under the same rule. At that time the Court carefully considered the evidence and denied the motion.

Now, the cases hold that the evidence introduced by the defendant may not be considered by the Court on the question of motion for acquittal even at the end of all the evidence in the case. I would cite for example on that Ross versus the United States, 197 Federal Second 660, a 1952 case in the Fifth Circuit. In the Annotations to Rule 30—Rule 29, excuse me—I find numerous cases citing that same proposition [798] that no quantum of evidence by the defendant and the denials of the defendant can be considered in the question of whether or not there has been any evidence on which a jury can properly find a verdict for the party producing the evidence.

Now, on that function of the Court I am quoting from the Ninth Circuit case in 1945 of Banks versus the United States, 147 Federal Second 628. The Court said there that the sole function of the court on a motion for a directed verdict, as it is now called, I mean as it was then called, or motion for acquittal as it is now described, is whether there is any evidence on which a jury can properly find a verdict for the party producing the evidence.

Or, as stated in another Ninth Circuit case of Schino, 209 Fed. 2nd 67 at page 72, Ninth Circuit, in 1953, the Court said on page 72 on a motion for judgment of acquittal the court must consider the evidence in the light most favorable to the Government, and cites certain Supreme Court cases. Of course, I don't need to go into all of the cases for that proposition, that the court is not to weigh the credibility of the witnesses, that the court is to give full play to the jury's right to weigh the credibility of the witnesses and must assume that the Government witnesses told the truth, that on that specific proposition the court in determining the propriety of a motion for acquittal is to assume that all [799] of the Government witnesses told the truth.

I would give your Honor the 1954 case in the Court of Appeals for the District of Columbia of Thomas versus the United States, 211 Federal 2nd 45, where the Court said specifically: The trial court must assume the truth of the Government's evidence and must give the Government the benefit of all the legitimate inferences to be drawn therefrom.

We find this same proposition set forth in a Ninth Circuit case, Gendleman versus the United States, 191 Federal 2nd 993—that's in the Ninth Circuit, 1951—the same general proposition that the sole function of the trial court is to examine all of the evidence assuming that the jury believed the Government's witnesses, and then to determine whether there is evidence which, taken in the light most favorable to the United States, tends to show the defendant guilty beyond a reasonable doubt. The

mere possibility, say the courts, that the jury might have a reasonable doubt is not a criterion at this point.

Now, the Court having considered the evidence of the Government thus far, denied the motion for acquittal made at the close of the Government's case. Now, it is my belief that the Government's position could be no worse at the close of all of the evidence of the case and was in a much better position in certain respects, which I will discuss, the most important of which were the discrepancies of the [800] testimony of Levy on the witness stand which was sharply in conflict with what he had said before and with what independent corroborative evidence showed; and secondly, the impeachment of the attorney Rutherford on two important points, and that is whether or not he had actually received a referral fee of $100 at the time he said or whether that was another fee that he had a complete description for, and which he was quite sure was not a referral fee from the attorney Rutherford. The second point the attorney Rutherford was his absolute impeachment of Mr. Levy on the question of his presence in Reno in 1952 in connection with the Fong divorce, complete with the conversation that occurred at that time.

Now, taking into consideration that the evidence then of the Government was in a better position, it is our belief that the cases hold that this should be treated by the Court as the law of the case at that time.

Now, on the proposition of what the Court must

do in analyzing the evidence, I would like to call attention to the District Court case here in California in 1950 of United States versus Cole, 90 Fed. Supplement 147. Now, in that case the Court said: If the Court, having given full play to the right of the jury to determine the witnesses' credibility and weigh the evidence and draw the justifiable inferences, finds that a reasonable mind might fairly conclude guilt beyond a [801] reasonable doubt, the Court must deny the motion.

Now, note that the Court said if a reasonable mind might fairly conclude guilt based upon all of those assumptions, then the Court must deny the motion. Here, in this case, we had not one but ten minds which concluded, not on the basis of necessarily believing all of the government's evidence, but believing only such of the evidence as it chose to believe, ten jurors found that the defendant Levy was guilty beyond a reasonable doubt.

The Court: There is nothing in the record to show that, Mr. Schnake, and you have no right to refer to it.

Mr. Schnake: Mr. Burns did, your Honor.

The Court: I didn't hear it.

Mr. Schnake: He referred to the numerical advantage of ten to two.

The Court: I never heard it.

Mr. Schnake: Did you say numerical advantage?

Mr. Burns: I told with reference to the case I cited to his Honor, they were divided six to six, and it was indicated here there was some other numerical arrangement.

Mr. Schnake: I am sorry, your Honor, I thought the word numercial advantage had the words ten to two, but I will call the Court's attention to the fact that it is in the record that at least some of the jurors found that the defendant was guilty beyond a reasonable doubt and there could not have [802] been a disagreement——

Mr. Burns: That is not in the record; there is no such finding by the jury, by any juror.

Mr. Schnake: Now, in this case I would call the Court's attention to certain, I think, very, very important points of showing that if the government's evidence is given any sort of credence at all, including particularly the admissions of the defendant Levy, that there had to have been a participation knowingly in this conspiracy. Mr. Burns' argument has been, apparently, that he concedes that there was a conspiracy between Fong and Jean Yee and Jonathan Yee, and then says there is a failure of proof of knowledge of the agreement by Mr. Levy. And yet here is the evidence on that point, your Honor:

The very, very close association between the two people was significant evidence that the jury would be entitled to consider. The fact of the loans between the parties, and I would call attention to the Court that the Court is certainly aware of the fact that it is a violation of the canon of ethics of an attorney to either lend money to or borrow money from a client, and yet this was done, that the Supreme Court——

The Court: Is he charged with that? Is that an offense?

Mr. Schnake: No, your Honor. I am pointing to that, your Honor, as showing the type of relationship between the [803] defendant Levy and the defendant Fong as being circumstantial evidence on which the jury could reasonably infer that when the witnesses testified as to Levy's knowledge, it was true, it was corroboration of the government's evidence on that point, that Mr. Levy had incidentally been very specific in swearing that he had not borrowed any money from Mr. Fong any time after 1950. That was in the exhibit where he was questioned in the United States Attorney's office, and yet the evidence showed that that was not true.

Now, on the conversations in the presence of Jean and Jonathan Yee, which the Court must give credence to, there was far more than Mr. Burns set forth. For one thing, Mr. Burns was ignoring completely the testimony of the witness Jonathan Yee as to those conversations. In those conversations there were direct statements of advice that only an attorney could give and that was the advice as to how the exact mechanics of the divorce would be arranged, that Mr. Levy would refer the matter to an attorney in Reno, Nevada, that it was better to get a divorce in Reno, Nevada, and who should get the divorce.

Here we have a very strong affirmative overt act, in connection with that, and that is the trip to Reno, Nevada.

Now, the witness Levy on the witness stand, Mr. Levy admitted that he learned from Fong that Fong had gone up there with the express purpose of ar-

ranging a place for Jonathan [804] Yee to stay. Now, we know from the other evidence that Mr. Fong, that is, from the testimony of Jonathan Yee, that Mr. Fong was arranging for the testimony of a perjurious witness as to residence, and that was uncontradicted in this trial. Mr. Levy admitted on the witness stand that he took Fong to the office of Rutherford for the purpose of introducing him. It's the only fair inference the jury could draw, that it was for the purpose of arranging the Yee divorce, and yet Levy testified he had no knowledge of the purpose of this trip. This was an overt act, your Honor, that showed active participation and not mere acquiescence on the part of the defendant Levy.

Now, his advice as to sending letters to Washington was not the mere offhand advice of someone not actively participating, but it was the advice an attorney would give to a person taking—how a passport application could be hastened and aided. And the advice regarding the change of the utilities in September of 1951, was something that the conspirators had not thought of, so it was an essential element of this case that they concealed their true position.

On these points, your Honor, we had independent corroboration of impartial witnesses who knew that Jean and Jonathan Yee were not living together—or were living together as husband and wife in the summer of 1951. Yet we have Mr. Levy saying that he never saw the parties together. [805]

I think that careful consideration in this case

must be given to the fact that the defendant Levy denied much of the evidence, in fact all of the important evidence against him in that period of 1951. This Court, in determining whether or not there is any evidence under which a jury might conclude guilt, is their result of the belief that the defendant Levy lied on the witness stand because it must be assumed that the government's witnesses told the truth.

Now, Mr. Burns—I don't think there is any point of my going over all the evidence except to point to one last very important conversation in December of 1951. The importance to the conspiracy was this, Judge: If Mr. Levy did not convince Jean Yee that she should continue with the agreement, the whole plan would very likely have come to light because of her terribly despondent state, her supposed suicidal tendencies that the facts very well could have leaked out by her revealing it to members of her family in her present mental state. So Mr. Levy and Mr. Fong, and here Mr. Levy was the active party, not Mr. Fong, in convincing Jean Yee that the agreement would be carried out by Jonathan Yee, and that he, Levy, would see to it that Jonathan Yee did carry out the agreement.

Now, going to the last piece of evidence that the government introduced on which the Court did not rule the evidence was inadmissible against Levy, that was the Fong [806] statement in April, on April 4th, in 1956. On that the Court properly ruled in accordance with the Lutwak case that even if the conspiracy was over, the act of Mr. Fong would be

admissible to show the prior conspiracy, if there was one.

Now, on that I think the Court should give careful attention to the fact that the defendant Fong at that moment, not knowing there were any government agents listening to that conversation and talking with the persons who had knowledge of those facts, had no motive for lying. What he was saying had to be the truth or it wouldn't have any convincing effect on her, Jean Yee, that she should go along with the agreement to match testimony. In that conversation it was repeated by the defendant Fong at least five times as an act on his part attempting to convince her to lie. He repeated five times the fact that Levy was guilty, that Levy was the advisor that he was there, and when the arrangements were made, that he advised the commission of this crime.

Now, that act on the part of defendant Fong was of extreme significance, because as the two parties discussed Mr. Levy's participation in the matter, they each were acknowledging particular conversations that did take place at the time these witnesses said they took place and not at the time Mr. Levy said they took place and not in the manner that Mr. Levy testified to. So I would say that that evidence was strong evidence of the guilt of the [807] defendant Levy, and the Court properly ruled on its admissibility and the jury properly considered it.

I will point out to the Court I did not argue what was said in that conversation at all in the closing argument to the jury. I felt that the act itself should be considered for just what it was worth, so that I

don't think that the jury was unduly or improperly swayed in its deliberations as to the defendant Levy by that conversation on April 4, 1956; but it seems to me that it was absolutely without question a truthful statement on the part of both of the parties considering their lack of any motive to lie.

Mr. Burns: I would just like to point out to your Honor that in each of those cases Mr. Schnake stated to you there had been a verdict adverse to the defendant. I believe your Honor is very familiar with the Schino case, because I believe your Honor tried the case, and it was quite apparent in that case there was a verdict adverse to the defendant and the rule was properly stated by the Court of Appeals.

But here we have a situation, although from listening to Mr. Schnake I reached the conclusion that he had some observers likewise in the jury room because he kept referring to the findings of the jury and what inferences they had drawn. We have nothing in the record. We have a disagreement of the jury and there isn't any finding against the defendant or in favor of the government. [808]

And while we are speaking on the subject of the Cole case, I have the case here and I can read the balance of the statement that the trial judge made in that case. He says: The true rule, therefore, is that a trial judge in passing upon a motion for directed verdict of acquittal must determine whether upon the evidence, giving full sway to the rights of the jury to determine credibility, weigh the evidence and draw justifiable inferences, a reasonable mind

might fairly conclude. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or stated another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted.

If he concludes that either of the two results, a reasonable doubt or no reasonable doubt is fairly possible, he must let the jury decide the matter.

Now, I submit to your Honor that the facts of this case as presented by the government do not measure up to the allegations of the indictment and that the conduct of Mr. Levy was as consistent with his innocence as with his guilt, and that the government failed, as they did in the case to which I have referred your Honor previously, in establishing the essential elements, his knowledge of the existence of the conspiracy, to obtain the entry of Chin Bick Wah to this [809] country, and we submit the matter.

Mr. Schnake: Your Honor, could I make just one comment on Mr. Burns' last statement? That on the correct reading of the rule that if it is either possible that they might have had a reasonable doubt or that they might not, then the Court must leave it to the jury. Now, certainly the ruling of Rule 29 intends that if the Court, having considered this test, finds that there is any evidence on which a jury might conclude it, then even though it may be a new jury, certainly our jury system demands that the final disposition of the question of guilt or innocence be made by a jury rather than by a court.

Now, I think in a case where an attorney has been prosecuted and two defendants have been either convicted on pleas of guilty or a verdict of a jury, there is an important public interest, that the people of the United States have a right to see to it that a jury determines the question of the guilt or innocence of the defendant who is an attorney sworn to uphold the law. I don't think that the arguments made that what he did was in the professional capacity as an attorney are to be considered at all. In fact, they point up, as was stated in the case of Laska versus United States, 82 Federal 2nd 672 at 676, the Court in considering whether there was—a trial court had properly denied a motion for acquittal as to an attorney participating in a conspiracy [810] by simply advising some people how to dispose of some ransom money, and also eventually receiving some of that money as payment of witness fees, the court carefully discussed the question of whether or not the attorney relationship, the attorney-client relationship could be any haven in a case like that, and they concluded where the participation was no greater than it was here, and certainly less, because, your Honor, there were no actual legal services that had to be rendered, they concluded there was sufficient evidence of a conspiracy and knowledge on the part of the attorney.

I would also call your Honor's attention to the case of Baird versus the United States, 196 Federal 779, a 1912 case where the court said that it is urged that the defendant's connection with these transactions, which was a subornation of perjury case, was

merely as an attorney-at-law practicing his profession. The evidence justifies a contrary view, but even members of the bar have no professional right to counsel, advise, or assist others to violate the laws of the United States. They may properly defend a defendant charged with a crime, but in the prospective or current commission there is no privilege or immunity.

Now, I think that is essentially what we have here, your Honor, Mr. Burns has contended that what this man did was what he had a right to do. It would be if it were not for the fact that he had knowledge of the fact that these acts [811] he was doing were being used as essential steps in a criminal conspiracy.

The Court: Matter submitted?

Mr. Burns: Yes, your Honor.

The Court: Well, after a thorough consideration of all of the evidence that was presented in the case, and of course that is all that I can consider, it appears to me that the evidence of the connection of the defendant Levy with any conspiracy is extremely slight. The main thing that the evidence shows, and which he admitted, was that he recommended an attorney in Reno for Jonathan Yee. This he had a legal right to do. Any other connection that he is alleged to have had is, in my mind, very doubtful.

There was highly inflammatory testimony by certain witnesses who were admittedly members of a conspiracy and whose credibility was at least questionable. Both of them had admitted they were mem-

bers of the conspiracy; one had admitted that he had committed perjury, or shown that he committed perjury in his residence testimony in the matter in Reno.

From a consideration of all of the evidence I cannot say that I believe beyond a reasonable doubt that the defendant Levy was an active or any party to the conspiracy, and I do not believe that a reasonable mind, or rather, I believe that a reasonable mind would find that there was a reasonable doubt as to his guilt. [812]

Accordingly, the motion of the defendant Levy for judgment of acquittal is granted.

Mr. Schnake: Your Honor, might I ask ten days in which to submit a memorandum of law on the point about the function of the court to determine credibility——

The Court: The motion is granted, Mr. Schnake.

Mr. Schnake. I am asking the Court to reconsider it, to allow us to submit a written memorandum on that point of law. I think it is an important one, and I think that the statement that a reasonable mind would find a reasonable doubt here is not a correct statement of the law, your Honor, and that I would like to submit authorities——

The Court: You have whatever remedy you have, Mr. Schnake. I have made this ruling and I intend to abide by it.

Mr. Burns: The bail is exonerated, your Honor?

The Court: Bail is exonerated.

Mr. Burns: Thank you, your Honor.

Certificate of Reporter

I (We), Official Reporter(s) and Official Reporter(s) pro tem, certify that the foregoing transcript of 813 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ RUSSELL D. NORTON.

[Endorsed]: Filed September 7, 1956. [813]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing documents and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorney for the appellant:

Indictment.

Verdicts.

Judgment & Commitment.

Minutes of July 19, 1956.

Order Refusing application for bail.

Notice of Appeal.

U. S. Exhibits #1 to 26 inc.—7A, 7b, 7c & 7d.

Deft's. Exhibits A, C, B, E & F.

Designation of Clerk's Transcript on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 24th day of August, 1956.

C. W. CALBREATH,
Clerk;

By /s/ WM. J. FLINN,
Deputy Clerk.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL SUPPLEMENTAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the accompanying transcripts, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal as herein designated for the attorneys for the appellant:

Reporter's Transcripts in six volumes, dated July 9, July 10, July 11, July 12, July 13, & July 16, 17 & 19.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of September, 1956.

[Seal] C. W. CALBREATH,
Clerk;

/s/ WM. J. FLINN,
Deputy Clerk.

[Endorsed]: No. 15268. United States Court of Appeals for the Ninth Circuit. Chin Bick Wah, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed August 24, 1956.

Docketed: September 7, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15268

CHIN BICK WAH,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH APPELLANT RELIES ON APPEAL AND DESIGNATION OF RECORD ON APPEAL

Now comes, Chin Bick Wah, the appellant in the above-entitled cause and submits herein her statement of points upon which she intends to rely on appeal as follows:

1. Insufficiency of the evidence as a matter of law to establish guilt as to the First Count of the indictment.

2. No evidence in law to establish guilt on the Sixth Count of the indictment.

3. Errors in the admissibility of evidence.

4. Error in the denial of appellant's motion for judgment of acquittal.

5. Error to the substantial prejudice of appellant in the Court's charge to the Jury and its refusal to charge the Jury as requested by appellant.

Appellant desires that all of the record, as certified to the Clerk of this Court, be printed except that portion of the record constituting the testimony of Robert L. Levy, Robert Eng, and James T. Rutherford, commencing on page 598 and ending on line 12 of page 738 of the Reporter's Transcript.

Dated: September 20, 1956.

/s/ JAMES T. DAVIS,
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed September 20, 1956.

FILED
SEP 7 1957
JOHN T. FEY, Clerk

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 439

CHIN BICK WAH,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No.

CHIN BICK WAH,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Earl Warren, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on May 28, 1957.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Ninth Circuit (R. 630) has not as yet been officially reported. The opinion of the Court of Appeals and the judgment of the Court (R. 638) also printed in Appendix A, *infra*, pp. i-xi.

JURISDICTION.

The judgment of the United States Court of Appeals was dated May 28, 1957 and was entered on that date. (R. 639.) Petition for rehearing was denied on August 9, 1957. (R. 639.) The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED.

1. Can a conviction for making false statements in an application for an immigration visa stand where:

(1) The indictment charges in one count that petitioner made three separate false statements in the application;

(2) The jury was not instructed that to convict it must find all three of the statements to have been false; and

(3) The Court of Appeals finds that there is a failure of proof as to one of the charged statements and possibly as to a second charged state-

ment but affirms the conviction on a finding that there was evidence from which the jury could infer that the third charged statement was false?

2. Can a conviction of petitioner of conspiracy stand under a count of indictment which may be construed as charging two conspiracies, one of which does not join petitioner as a defendant?

3. Can a conviction of petitioner of conspiracy stand where the trial Court admits into evidence a *series* of post conspiracy declarations of un-indicted co-conspirators and post conspiracy declarations of a co-defendant, all made outside petitioner's presence, without limiting such declarations at the time of admission to the declarants?

4. Can a conviction stand where:

(1) Evidence is admitted subject to a motion to strike of acts of a co-defendant and an un-indicted co-conspirator in securing the illegal admission of the co-conspirator into the United States eleven years prior to the time of the conspiracy charged against petitioner;

(2) Petitioner is never connected with such acts; and,

(3) Petitioner's motion to strike such evidence as to her is denied?

STATUTES INVOLVED.

1. 18 *U.S.C.* 1546 (1948): "Whoever knowingly makes under oath any false statement in any applica-

tion, affidavit, or other document required by the immigration laws or regulations prescribed thereunder—shall be fined not more than $2,000, or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 771."

2. 18 *U.S.C.* 371: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 701."

3/ The provisions of the statutes setting forth the substantive offenses which petitioner is charged with conspiring to commit: 8 *U.S.C.* 1324; 8 *U.S.C.* 1325; 18 *U.S.C.* 1001; and 18 *U.S.C.* 1542 are printed in Appendix B, *infra*, pp. xii-xiv.

STATEMENT OF THE CASE.

Petitioner stands convicted in the United States District Court for the Northern District of California of two offenses:

1. Conspiracy to defraud the United States concerning the administration of the immigration and nationality laws and to commit the substantive offenses denounced by the following statutes: 8 *U.S.C.* 1324; 8 *U.S.C.* 1325; 18 *U.S.C.* 1001; 18 *U.S.C.* 1542; and 18 *U.S.C.* 1546; and

2. The substantive offense of knowingly making under oath false statements in an application for an immigration visa in violation of 18 *U.S.C.* 1546.

The conspiracy count of the indictment charged petitioner and two co-defendants, William Fong and Robert Levy, with conspiring with six un-indicted co-conspirators to effect petitioner's illegal entry into the United States as the wife of Jonathan Yee, one of the un-indicted co-conspirators.

The substantive count charged petitioner with knowingly making under oath on March 5, 1952, at Hong Kong, in her application for an immigration visa, the following false statements:

1. She was married to Jonathan K. Yee;

2. Her passage was paid for by her husband Jonathan K. Yee;

3. She intended to join her husband Jonathan K. Yee in the United States.

Petitioner married Jonathan Yee in Hong Kong on November 29, 1951. She filed her application for an immigration visa to the United States on March 5, 1952 and at that time made the representations which are the basis of the substantive count.

The indictment charged that petitioner's marriage in Hong Kong was a sham ceremony undertaken as part of a conspiracy to secure petitioner's entry into the United States so that she might become defendant Fong's Number 2 wife. (R. 6-8.)

There is evidence in the record which supports this charge. There are, however, many factors which

would support the inference that any plan or agreement between Jonathan Yee and defendant Fong did not embrace petitioner as a party and that she married Jonathan Yee in good faith in Hong Kong, and made every effort in the United States to make the marriage a lasting success. Some of these considerations are noted by the Court of Appeals in discussing the evidence consistent with petitioner's innocence. There is much more evidence consistent with petitioner's innocence in the record not noted by the Court of Appeals. The result, however, is a conflict in the evidence which is significant because of the serious errors of law which are the basis of this petition.

REASONS FOR GRANTING THE WRIT.

The writ of certiorari sought by this petition should be granted for the reasons (1) that the Court of Appeals' decision on both the substantive count and the conspiracy count is in conflict with applicable decisions of the Supreme Court, and (2) that the affirmance of the conspiracy count sanctions an extension of the "already pervasive and wide-sweeping nets of conspiracy prosecutions" recently denounced by the Supreme Court in *Grunewald v. United States*, 1 L. Ed. (2d) 931, 353 U.S. 391, 77 S.Ct. 963.

I.

FAILURE OF PROOF OF ANY OF THE REPRESENTATIONS CHARGED IN THE SUBSTANTIVE COUNT REQUIRES REVERSAL.

The Court of Appeals in its opinion notes that there was a failure of proof that petitioner knew that Jonathan Yee did not pay for her ticket from Hong Kong to San Francisco. The Court further indicated doubt about the falsity of the statement that petitioner was married to Yee. However, the Court finds the conviction supportable on the representation that she intended to "join" Yee in the United States.

This holding is in conflict with that of the Supreme Court in *Warszower v. United States,* 312 U.S. 344, 85 L.Ed. 876, 61 S.Ct. 481; *Grunewald v. United States,* 353 U.S. 391, 77 S.Ct. 963, 1 L.Ed. (2d) 931, 949; and *Yates v. United States,* 354 U.S. 298, 1 L.Ed. (2d) 1356, 77 S. Ct. 1064.

In *Warszower v. United States, supra,* the Supreme Court noted:

> "The prosecution had the burden of proving that the passport was obtained by the use of false statements. As the trial court instructed the jury, it might convict if any one of the statements charged in the indictment to be false was found false, *it is necessary before affirmance to decide whether there was adequate evidence to support the charge of falsity as to each of the statements.*" (Emphasis added.)

In the instant case the trial Court gave no instruction whatsoever as to whether the jury might convict on a finding that one or all of the representations were

knowingly false when made by petitioner. To support the conviction on this count, it must be held that the jury found that all three of the representations were so made by petitioner.

In this respect the instant case is akin to that of *Yates v. United States, supra,* where the Supreme Court stated:

> "The Government contends that even if the trial court was mistaken in its construction of the statute, the error was harmless because the conspiracy charge embraced both 'advocacy' of violent overthrow and 'organizing' the Communist Party, and the jury was instructed that in order to convict it must find a conspiracy extending to both objectives. Hence, the argument is, the jury must in any event be taken to have found petitioners guilty of conspiring to advocate, and the convictions are supportable on that basis alone. We cannot accept that proposition for a number of reasons. The portions of the trial court's instructions relied on by the Government are not sufficiently clear or specific to warrant our drawing the inference that the jury understood it must find an agreement extended to both 'advocacy' and 'organizing' in order to convict . . . In these circumstances, we think the proper rule to be applied is that which requires a verdict to be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which the jury selected."

II.

COUNT ONE OF THE INDICTMENT CHARGING THE CONSPIRACY IS FATALLY DEFECTIVE AS IT MAY BE CONSTRUED AS CHARGING TWO CONSPIRACIES, ONE OF WHICH DOES NOT JOIN PETITIONER AS A DEFENDANT.

The skeleton of the indictment is in the following form:

> "First Count: (18 U.S.C. 371)
>
> The Grand Jury charges that:
>
> 1. Commencing on or about January 1, 1950 and continuously thereafter up to and including the date of the return of the indictment . . . William Fong, . . . Chin Bick Wah . . . and Robert Leonard Levy did . . . conspire . . . and agree with each other [and others] . . .,
>
> (A) To commit offenses against the United States . . . and
>
> (B) To defraud the United States . . .
>
> 2. In the year 1939 Fong Wy Sum and his mother Fong Yee Shee conspired and agreed with Jonathan K. Yee, a Chinese alien, to assist him in effecting an illegal entry into the United States by purchasing for Jonathan K. Yee a fictitious identity as a derivative citizen of the United States. In consideration thereof Jonathan K. Yee agreed to pay to Fong Wy Sum the amount of $2,000.00 for the purchase of the fictitious identity and the expenses of passage to the United States. Pursuant to the agreement Jonathan K. Yee entered the United States on December 24, 1939, under the fictitious identity of Yee Yuen Foon, and in the years thereafter paid Fong Wy Sum amounts in excess of $2,000.00, as demanded by Fong Wy Sum." (R. 3-6.)

Petitioner was named neither as a co-defendant nor co-conspirator in the latter conspiracy. Although the case was submitted to the jury on the premise that the indictment charged only one conspiracy the first count of the indictment, with the exception of the overt acts, was read in its entirety to the jury and the jury was given the indictment itself upon retiring. (R. 559-565, 591.)

Furthermore the transcript of the record of the trial is replete with evidence relating to the conspiracy charged against Fong, his mother and Jonathan Yee to effect his illegal entry and petitioner's alleged knowledge of this conspiracy.

Any conviction of petitioner as a party to the latter conspiracy would obviously be a miscarriage of justice. Yet in the face of the record presented by the prosecution, it is impossible to now determine what theory of the case was adopted by the jury. Under this posture of the case, the judgment should be reversed.

Yates v. U. S., 354 U.S. 298, 1 L.Ed. (2d) 1356, 77 S.Ct. 1064;

Grunewald v. U. S., 353 U.S. 391, 1 L.Ed. (2d) 931, 77 S.Ct. 963.

III.

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN ADMITTING INTO EVIDENCE TESTIMONY OF DECLARATIONS OF ALLEGED CO-CONSPIRATORS AFTER THE TERMINATION OF THE CONSPIRACY.

The trial Court in this case admitted into evidence a series of declarations and statements of co-conspirators made outside the presence of petitioner in the last part of 1955 and in April of 1956, just 4 or 5 days prior to the return of the indictment. The declarations were all made in the course of efforts to discourage disclosure of the past events to Government investigators or the grand jury.

The occasions on which such post-conspiracy declarations of alleged co-conspirators outside appellant's presence were admitted were as follows:

1. Jean Yee, an admitted co-conspirator, testified concerning declarations of alleged co-conspirator Fong Yee Shee made around Christmas of 1955. (R. 442.)

2. Jean Yee testified concerning a telephone conversation with alleged co-conspirator Ruby Yee on April 4, 1956. (R. 443.)

3. Jean Yee testified concerning a meeting on the afternoon of April 4, 1956 with defendant Fong and alleged co-conspirator Fong Yee Shee and the declarations of each. (R. 445.)

4. Jean Yee testified concerning a telephone conversation on April 5, 1956 with defendant Fong and alleged co-conspirator Fong Yee Shee. (R. 453-454.)

5. Jean Yee testified concerning a telephone conversation with alleged co-conspirator Fong Yee Shee on April 6, 1956. (R. 454.)

6. Francis Leo, a Government interpreter, testified concerning the meeting on April 4, 1956 between Jean Yee, defendant Fong and Fong Yee Shee and the declarations of each. (R. 519-529.)

7. E. T. Prather, a Government agent, testified concerning the meeting on April 4, 1956 between Jean Yee, defendant Fong and Fong Yee Shee and the declarations of each. (R. 532-538.)

8. Jonathan Yee testified concerning the declarations of alleged co-conspirator Fong Yee Shee on April 5, 1956. (R. 112.)

9. Jonathan Yee testified concerning declarations of alleged co-conspirator Fong Yee Shee on April 6, 1956. (R. 116-117.)

The limitation on the admissibility of statements and declarations of co-conspirators outside the presence of defendants and after the termination of the conspiracy is well-established.

Krulewitch v. United States, 336 U.S. 440, 93 L.Ed. 790, 69 S.Ct. 716;

Lutwak v. United States, 344 U.S. 604, 97 L. Ed. 593, 73 S.Ct. 481.

The Government, however, in this case claimed throughout the trial that evidence of statements of alleged co-conspirators up until the return of the indictment was admissible against all defendants as acts and declarations in furtherance of the conspiracy on the ground that a conspiracy to conceal was expressly alleged as one of the crimes charged in count 1 of the indictment together with the specification of

an overt act of concealment in furtherance of the conspiracy, relying upon *Lew Moy v. United States,* 237 F. 50, 52, and *Lutwak v. United States,* 344 U.S. 604, 93 L.Ed. 790, 69 S.Ct. 716.

Grunewald v. United States, 353 U.S. 391, 1 L.Ed. (2d) 931, 77 S.Ct. 963, finally laid to rest the contention upon which the Government claimed the evidence was admissible under *Lutwak v. United States, supra.* Insofar as *Lew Moy v. United States, supra,* might be regarded as establishing a different rule in conspiracies to effect the illegal entry of aliens into the United States (see *Krulewitch v. United States,* 336 U.S. 440, 442, citing "Cf. *Lew Moy v. United States,* 237 F. 50"), it is submitted that reason does not support such a distinction and that it should be expressly disapproved in the light of the *Grunewald* case.

Under the ruling of the *Krulewitch* case, reaffirmed by the Supreme Court in *Grunewald v. United States, supra,* it was prejudicial error to admit under any circumstances evidence of declarations made outside petitioner's presence after the termination of the conspiracy *by co-conspirators not charged as defendants.* The admission of the declarations of Fong Yee Shee and Ruby Yee (1), (2), (5), (8), and (9) previously specified, is directly contrary to these decisions.

The rule for the admission in a conspiracy case of declarations of *co-defendants* after the termination of the conspiracy is clearly set forth in *Lutwak v. United States,* 344 U.S. 604, 617-619, and *Paoli v. United States,* 352 U.S. 232, 1 L.Ed. (2d) 278, 284. It is

the mandate of these cases that such declarations "must be carefully and clearly limited by the court at the time of their admission."

This rule was violated in the instant case.

The testimony of Jean Yee concerning the meeting on April 4, 1956 with defendant Fong and Fong Yee Shee and the declarations made embraced practically every facet of the alleged conspiracy. Her account of the statements and declarations made extends through pages 446-452 of the record. There can be no question but that the testimony was highly incriminating not only as to the persons present but petitioner also.

This highly prejudicial testimony was admitted to the jury without a limiting instruction of any kind. After co-defendant Levy had interposed an objection to the admission of this testimony the record shows the following occurred:

> "Mr. Schnake (Government Counsel). Your Honor, we have the memorandum of law which we finished this morning.
>
> The Court. It is too late to give it to me now, counsel. The objection may be overruled. I don't want to see it. I should have had it before.
>
> Mr. Schnake. We were just able to finish it a few minutes ago, your Honor, and I would like to file it at this time relating to some other matter that will come up.
>
> The Court. The objection is overruled." (R. 445.)

Careful examination of the record discloses that at no juncture of the proceedings did the trial Court

observe the mandate of the Supreme Court in the *Lutwak* and *Paoli* cases that such declarations "must be carefully and clearly limited by the Court at the time of their admission" to avoid prejudicial error. In the course of passing on the admissibility of the post-conspiracy declarations heretofore enumerated, the Court made three classes of rulings:

(1) The objections were summarily overruled and the declarations admitted without limitation of any kind. (R. 442, 445 and 454.)

(2) The objections were overruled but the admission of the evidence limited "solely for the purpose of proving, if it does prove, the existence of a conspiracy." (R. 444, 453.)

(3) The objections were overruled but the admission of the evidence limited to a declaration of the person making it except for such weight as it may have to prove the existence of the conspiracy. (R. 518, 531, 113-114, 116.)

The error in this case was not of the admission of a single post conspiracy declaration of a defendant as in the *Lutwak* case. The error in this case extended to a series of such post conspiracy declarations, and some merely by co-conspirators not joined as defendants. The post conspiracy declarations of defendant Fong and co-conspirators Fong Yee Shee and Jean Yee were the subject of testimony not once but three times. Jean Yee's account appears on pages 446-452 of the record. Francis Leo, an interpreter for the Immigration Service, testified from notes made by him at the time of both the English and Chinese

portions of the declarations. (R. 519-539.) Agent Prather testified as to the portions of the declarations in English from notes made by him at the time. (R. 532-538.)

The Government's conduct in urging this evidence as admissible against petitioner and the Court's rulings admitting it without clearly limiting it against the declarants clearly transgresses the rulings of *Krulewitch, Lutwak,* and *Grunewald* and represents an extension of the conspiracy practices denounced by those cases.

IV.

THE COURT COMMITTED ERROR IN DENYING PETITIONER'S MOTION TO STRIKE.

Much of the testimony in the case related to the acts of defendant Fong in arranging for and accomplishing the illegal entry of Jonathan Yee into the United States in 1939 through a "paper" father. Petitioner made a motion to strike all evidence admitted of any incidents prior to the time of the conspiracy charged, January 1, 1950, on the specific ground of its prejudicial nature because charging a prior offense and that it did not tend to prove the subsequent formation of the conspiracy. Although the Court had expressly admitted this evidence subject to a motion to strike (R. 27) and the record is totally devoid of any evidence connecting petitioner with the conspiracy in 1939 to effect Yee's illegal entry or in the events which intervened from this date and the time of the com-

mencement of the conspiracy charged against petitioner, January 1, 1950, the Court denied petitioner's motion to strike this evidence as to her. (R. 548.)

CONCLUSION.

Although the Court of Appeals in its opinion chose to rest its affirmance of petitioner's conviction primarily upon a discussion of the sufficiency of the evidence on the substantive count, the essence of this case is the conspiracy charge. Without this charge there would have been little basis for the admission of the mass of alleged acts, statements and declarations. The indictment named six persons as un-indicted co-conspirators. The purpose of such joinder, as is apparent from the record, was to lay a foundation for parading before the jury statements and declarations made by them outside petitioner's presence as statements of co-conspirators—whether in furtherance of the conspiracy or merely in furtherance of efforts to conceal evidence of the original conspiracy charged.

The instant case is a prime example of the "drift in the federal law of conspiracy" against which His Honor Associate Justice Jackson cautioned in his concurring opinion in *Krulewitch v. United States*, 336 U.S. 440, 93 L. ed. 790, 69 S.Ct. 716. The importance of the considerations of policy underlying this caution was recently reaffirmed by the Supreme Court in *Grunewald v. United States*, 353 U.S. 391, 1 L. Ed. (2d) 931, 940, 77 S.Ct. 963.

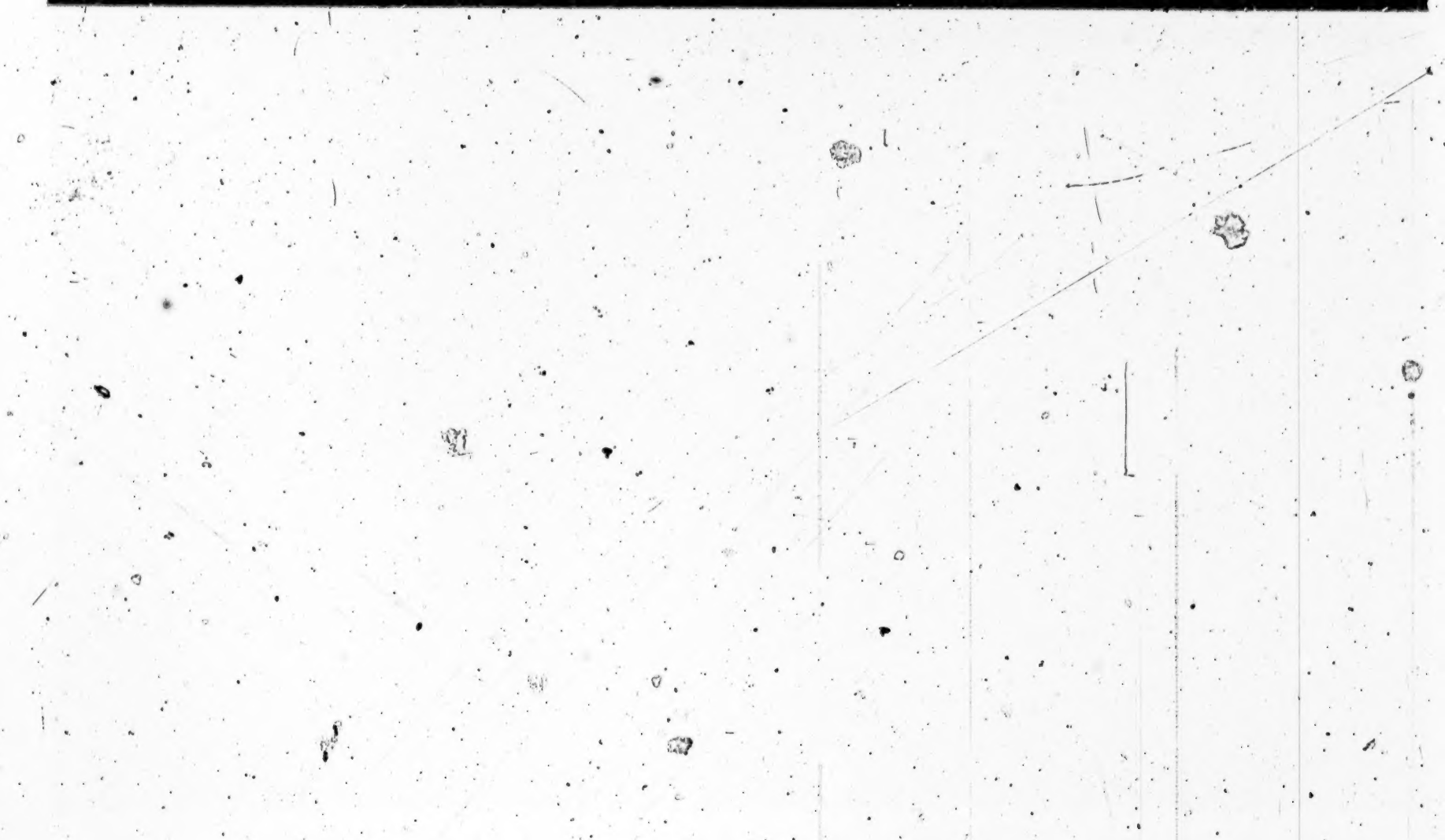
It is not only because of the conflict between the decision of the Court of Appeals with decisions of the Supreme Court but also because of the sanction of "loose practice," implicit in the affirmance of the conviction of petitioner on the conspiracy count, that we respectfully submit this petition for writ of certiorari should be granted.

Dated, San Francisco, California,
September 5, 1957.

ALVIN LANDIS,
ROBERT B. MCMILLAN,
Counsel for Petitioner.

THOMAS W. MARTIN,
Of Counsel.

(Appendices A and B Follow.)



Appendix A

United States Court of Appeals
for the Ninth Circuit

CHIN BICK WAH, *Appellant,* vs. UNITED STATES OF AMERICA, *Appellee.*	No. 15,268 May 28, 1957

On Appeal from the United States District Court
for the Northern District of California,
Southern Division

Before: STEPHENS, CHAMBERS and BARNES, Circuit Judges

CHAMBERS, Circuit Judge:

This case deals with how a citizen of China, the appellant Chin Bick Wah, now also known as Helen Fong, made her way (or was brought) into the United States in 1952 from Hong Kong. Her age is now about 38.

She stands convicted of a conspiracy count involving the immigration laws. Also, she was convicted on a substantive count, the sixth in the indictment. In the latter count, the charge of the indictment is that on March 5, 1952, at Hong Kong she made false state-

ments in her written application[1] for the immigration visa and alien registration in that she stated:

1. She was married to Jonathan K. Yee;
2. Her passage was paid for by her husband Jonathan K. Yee;
3. She intended to join her husband Jonathan K. Yee in the United States.

A concurrent sentence of one year's imprisonment on each count was imposed.

On this appeal, with identical sentences, we need not examine both convictions, if we find one free from reversible error. Goldbaum v. United States, 9 Cir., 202 F. 2d 674. We are satisfied from examining it that defendant's conviction on the conspiracy count was wholly proper and withstands appellant's claim of error. However, the substantive count conviction is the one we choose to discuss.

Now for some facts. Fong Wy Sum,[2] herein William Fong, operates a milk store in San Francisco's Chinatown. He is a merchant of some consequence there. William is now about 49 years old. Jonathan Yee, now approximately 35 years old, who gained

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[1]Sec 18 U.S.C.A. § 1546.

[2]William Fong and another were jointly charged with Chin Bick Wah in the Conspiracy or first count of the indictment. Then he alone was charged with substantive counts numbered two, three, four and five. Count six, the substantive count on Chin Bick Wah, concerned her alone. At the conclusion of the trial and before the jury retired to deliberate, William Fong entered a plea of guilty. The third defendant under count one, a San Francisco lawyer, was ultimately exonerated by the trial judge after the jury failed to agree on the lawyer's guilt.

admission to the United States in 1939, testified that he is actually a first cousin of William Fong: that Fong in 1939 helped him (Jonathan) get into the United States under a false name and with false papers.[3] The district attorney would draw the inference in the events with which we are here concerned that Yee was subject to blackmail and had to pursue about any motion that William dictated. Jonathan served in the army of the United States from May, 1944, until sometime in 1946. Generally, after returning to San Francisco from the army, and until 1952 at least, he worked for Fong in the milk business.

Possibly, economy of words can be achieved here by now setting up a marriage and divorce chronology of William Fong and Jonathan Yee:

——————, 1924,	William Fong marries Gee Kee Yip in China. She is brought to the United States in 1932 with one child, a daughter, born to this marriage prior to 1932.
September 8, 1947,	Jonathan Yee at Reno, Nevada, marries Jean Jow. She is an American born Chinese.
May 11, 1951,	Jonathan Yee at Reno divorces Jean Jow. Divorce decree provides for custody and support of three year old daughter Joanne.

[3] Apparently Jonathan entered as a "derivative" citizen under RS Sec. 1993, 34 Stat. 1229. A "paper father" who resided in the United States and was a citizen was conveniently supplied him.

November 29, 1951,	Jonathan Yee marries Chin Bick Wah (later called Helen) in Hong Kong.
May 31, 1952,	Jonathan Yee and Chin Bick Wah remarry at Reno.
October 24, 1952,	William Fong at Reno divorces Gee Kee Yip, his wife of 28 years.
July 28, 1953,	Chin Bick Wah (Helen) divorces Jonathan Yee at Reno.
October 1, 1953,	William Fong marries Chin Bick Wah (Helen) in San Francisco.
———, 1955,	Jonathan Yee, remarries his first wife, Jean Jow, a second child (a son) having been born to Jonathan and Jean on June 2, 1952, a date on which Jonathan was married to Helen.

We think it a fair assumption to state that resentment against William Fong and Chin Bick Wah by Jean Jow Yee and her sister, May Jow, and Fong's daughter Vivian probably enabled the government agents to get their case against William Fong and Chin Bick Wah started. The feet of these three women apparently were fixed firmly on the United States soil beyond chance of dislodgment.

Under the sixth count, the one against her alone, there was a failure of proof that Chin Bick Wah (henceforth usually referred to as Helen) knew that Jonathan Yee did not pay for her ticket from Hong Kong to San Francisco. On the second prong of the

sixth count, is was charged the statement of Helen was false when she swore she was married to Jonathan Yee. That involves some difficult law. Does a party (assuming belief by the fact trier) who has participated in a sham marriage (lacking an intent to really marry) make a false statement when she says she is married? We shall lay this second prong to one side.[4]

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[4]Rather comprehensive instructions were given the jury on the subject of conspiracy, such being the meat of the first count. On the sixth count, Helen's alleged false statements, the instructions were brief and particularized only as follows:

"In the sixth count of this indictment the defendant Chin Bick Wah is charged with the offense of knowingly and wilfully making a false statement in an application for an Immigration visa and alien registration in violation of Section 1546 of Title 18, United States Code, the pertinent portions of which provide as follows:

'Whoever knowingly makes under oath any false statement with respect to a material fact in an application * * * required by the immigration laws or regulations prescribed thereunder * * * shall be guilty of a public offense.'

"In connection with the charge contained in the sixth count of the indictment against Chin Bick Wah whose conduct is alleged to have taken place at Hong Kong, the United States Code provides as follows:

'The trial of all offenses begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district, shall be in the district where the offender is found or into which he is first brought.'"

Apparently, the instruction was agreeable to the appellant here. No request was made that the jury be instructed there was a failure of proof on one or two of the representations listed in the sixth count. And there was adequate evidence, we hold, of the falsity on the representation by Chin Bick Wah that she intended to join her husband in the United States.

The possible objection that count six charged three offenses was never made by Chin Bick Wah. It is too late now. And, probably she was well advised not to make it. Such action could have resulted in three counts instead of one. See Arena v. United States, 9 Cir., 226 F.2d 227.

Thus, we come to the third accused statement in the second count: that Helen at Hong Kong on March 5, 1952, in her application to the vice consul falsely stated under oath that she intended to join her husband, Jonathan K. Yee, in the United States (if she should gain admittance thereto). In her application she made the statement. Was it a false statement?

We must address ourselves to the meaning of "join her husband." We do not think a fine delineation of what the three words mean is necessary. If on March 5, 1952, she was intending to come to the United States, meet her newly acquired, technical at least, husband, Jonathan Yee, (who in February had preceded her back to San Francisco) and to promptly commence living with him as man and wife, then she intended to join her husband. On the other hand, if on March 5, 1952, the state of mind of Helen was that she had married Jonathan as a matter of convenience to get to the United States and had no intention as of that date of ever cohabiting with Jonathan, we do not think an intent to greet Jonathan cordially at the San Francisco airport and to proceed through other open and empty formalities would absolve her.

In this court, we cannot weigh the evidence. Appellant's counsel earnestly argues that the evidence was insufficient. He and Helen can point to facts such as:

1. There was a marriage, regular in form, of Jonathan and Helen in Hong Kong on November 29, 1951.

2. On the night of March 16, 1952, Jonathan signed the register in an Oakland Hotel "Mr. and Mrs.

Jonathan Yee." And at least Helen immediately occupied the room for which the registration was made. (March 16 was the day Helen arrived in San Francisco from Hong Kong.)

3. On May 31, 1952, Jonathan and Helen went to Reno and again they were participants in a marriage ceremony.

4. In August, 1952, Jonathan and Helen traveled together (with Jonathan's two children born to Jean) to Seattle where they lived together for a substantial portion of one month.[5]

All of the above is consistent with Helen's innocence in saying on March 5, 1952, that she intended to come to the United States to join her husband.

Intent here must be largely circumstantial, but the prosecutor has some pretty good circumstances.

1. The jury might believe that before Jonathan arrived in Hong Kong in October, 1951, Helen had been in correspondence with William Fong and not at all with Jonathan.

2. The jury might believe that Helen overheard Jonathan talking from Hong Kong to San Francisco to William Fong and Jean Jow Yee before the marriage ceremony. From those conversations, if related to the court truthfully, she may have known (if it could be possible she didn't know before) that she

[5]The prosecutor probably argued within proper bounds and with much force that the purpose of the remarriage and the short period of cohabitation of Helen and Jonathan was to excite William Fong to produce some promised consideration.

was destined for William Fong—not Jonathan Yee—and that from her he hoped to have a male heir.

3. The jury may have believed that at no time from November 29, 1951, the date of Helen's ceremonial marriage in Hong Kong, to the day in February, 1952, when Jonathan flew back to San Francisco, did Helen cohabit with Jonathan.

4. The jury may have believed that while Jonathan was in Hong Kong he requested money of William Fong in San Francisco and that Fong sent the money to Helen, not Jonathan, and Helen used it.

There were enough events preceding March 5 to find that on that day Helen did not intend to come to the United States to "join my husband, Jonathan Yee" as she swore she intended to do.

And later events reasonably close in time can send inferences backward to the event which is asserted to be a crime. Of course flight, although there was none here, is the common example. See Wigmore on Evidence, 3rd Ed. § 276.

When Helen reached San Francisco on March 16, 1952, there were a number of events which may have properly influenced the jury.

1. The jury may have thought that it was significant that apparently Helen was not disturbed when Jonathan brought Jean, by now in advanced pregnancy with her second child, to the San Francisco airport to greet her, Helen.

2. The jury may have thought that Helen, leaving the San Francisco airport, rode in a separate car to

the Oakland hotel via a celebration in San Francisco, there at Oakland to have Jonathan register her in and then leave to go back home in San Francisco to cohabit with Jean. The jury may have thought that over this ungroomlike conduct Helen made no outcry. (And it does seem rather clear from the evidence that Helen did have a temper.)

3. The jury may have believed that within a day or two after arriving in San Francisco, Helen was demanding that Gee Kee Yip divorce William Fong so she (Helen) could claim him as her prize.

4. The jury may have thought that Helen after arriving in the United States did demand that William Fong give her some property first before she would marry him and that the idea of demanding it did not originate after March 5, 1952.

There were many things not too remote either way from March 5 from which the jury could conclude that Helen on March 5, intended to come to the United States to "join" William Fong, or just to come to the United States, and not to "join" Jonathan Yee. See Wigmore on Evidence, 3rd Ed. §§ 267, 268.

Then, like flight, the ridiculousness of an alibi, sworn in court, or unsworn and out of court, can give some affirmative inferences. Particularly is this so on the matter of intent which can never be mathematically established. On December 21, 1955, Helen was questioned by immigration officers in San Francisco concerning how she came to the United States. These questions and her answers came into evidence. The degree of improbability of some of the answers

in her "alibi" point to a likelihood that on March 5 she had no intent to come to the United States to "join" Jonathan Yee.

There was ample evidence on the substantive count. Only a portion of it we have detailed. Likewise, the conspiracy, as we have indicated, was amply proved.

On the substantive count we have considered whether we have imposed too strict a meaning on the word "join." We do not think our decision is captious. We think if the jury thought that the game of musical chairs, i.e., the husband swapping, was all a part of a plan in which Helen was a knowing participant and by which she would get into the United States by becoming Jonathan Yee's wife in name only, there is no unfairness in convicting her for saying she intended to "join" her husband.

We conclude the evidence was sufficient to support the verdict and judgment.

Judgment affirmed.

(Endorsed:) Opinion. Filed May 28, 1957.
Paul P. O'Brien, Clerk.

Appendix "A"

United States Court of Appeals
for the Ninth Circuit

CHIN BICK WAH,	*Appellant,*	No. 15,268
UNITED STATES OF AMERICA,	*Appellee.*	

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and is hereby affirmed.

Filed and entered May 28, 1957.

Appendix B

STATUTES INVOLVED.

8 USC 1324. Bringing in and harboring certain aliens; persons liable; authority to arrest.

"(a) Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who—

(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to

the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however,* That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.

(b) No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws. June 27, 1952, c. 477, Title II, ch. 8, Sec. 274, 66 Stat. 228."

8 USC 1325. Entry of alien at improper time or place; misrepresentation and concealment of facts.

"Any alien who (1) enters the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than

two years, or by a fine of not more than $1,000 or both. June 27, 1952, c. 477, Title II, ch. 8, Sec. 275, 66 Stat. 229."

18 USC 1001. Statements or entries generally.

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or [illegible]try, shall be fined not more than $10,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 749."

18 USC 1542. False statement in application and use of passport.

"Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 771."

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No. 439

In the Supreme Court of the United States

OCTOBER TERM, 1957

CHIN BICK WAH, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 630-637) is reported at 245 F. 2d 274.

JURISDICTION

The judgment of the Court of Appeals was entered on May 28, 1957 (R. 638). A petition for rehearing was denied on August 9, 1957 (R. 639). The petition for a writ of certiorari was filed on September 7, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence was sufficient to support petitioner's conviction under a substantive count for making false representations in an application for an immigration visa.[1]

STATUTE INVOLVED

18 U.S.C. [1952 ed.] 1546 provides in pertinent part as follows:

* * * *

> Whoever knowingly makes under oath any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement—
>
> Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was charged, along with defendant Fong Wy Sum, defendant Levy (an attorney), and other co-conspirators under count one of an indictment returned in the United States District Court for the Northern District of California, with a conspiracy to commit certain federal offenses,[2] and to defraud

---

[1] Petitioner also raises issues as to the conspiracy count which we do not deem properly in the case in view of the concurrent sentences.

[2] The pertinent provisions were 8 U.S.C. 1324; 8 U.S.C. 1325; 8 U.S.C. 1440; 18 U.S.C. 1542; 18 U.S.C. 1546.

the United States in the administration of its immigration laws (R. 3-12). Petitioner was charged under count six with a substantive violation of 18 U.S.C. 1546 (*supra*, p. 2) in making a false oath in application for an immigration visa, by stating that she was married to Jonathan K. Yee, that her passage to the United States was paid for by her husband, and that she intended to join her husband in the United States (R. 14-15). The jury found petitioner guilty under both counts one and six (R. 599),[3] and the court imposed concurrent sentences of imprisonment for one year (R. 17-18). On appeal (R. 21-22), petitioner's conviction was unanimously affirmed (R. 638).

Pertinent evidence adduced at the trial may be summarized as follows:

Defendant Fong Wy Sum (hereafter called Fong) married Gee King Yip in China and brought her to the United States in 1932 (R. 326-327). In 1939 Fong and his mother, Yee Shee, assisted Fong's first cousin, Jonathan K. Yee (hereafter called Jonathan) to enter the United States illegally from Hong Kong. When he arrived in San Francisco, a "paper father" had been produced for Jonathan to effect his entrance (R. 24-32). Fong considered Jonathan under obligation to him since he had assisted Jonathan in entering the United States (R. 209, 396-397).

Jonathan married an American born Chinese wo-

---

[3] Defendant Fong, at the conclusion of the trial, pleaded guilty to counts one, three, four, and five (R. 548-549). The jury disagreed as to Levy's guilt, and the court later ordered his acquittal (R. 622).

man named Jean Jow Yee (hereafter called Jean) in September 1947 (R. 58, [illegible]). Fong, who had previously unsuccessfully tried to bring petitioner, a Chinese native, to the United States as a student nurse (R. 39-40), suggested that Jonathan divorce Jean, take a trip to Hong Kong to marry petitioner, and bring petitioner to the United States so that she could become Fong's "number two" wife (R. 43-44, 366-367).

On May 11, 1951, Jonathan obtained a divorce after being referred to a Reno lawyer by attorney Levy, a close friend of Fong (R. 56, 59, 60, 377). Fong paid the expenses for this divorce (R. 57-58, 372). Upon his return to San Francisco, Jonathan continued to live at his old address with his former wife, Jean (R. 60, 379). The utility bills were changed to Jean's name alone at the suggestion of attorney Levy (R. 69-70, 384).

Immediately after the divorce, Fong prepared a passport application for Jonathan, in which Fong and Jonathan swore falsely that Jonathan was a United States citizen and that Fong was not related to Jonathan (R. 61-64; Govt. Ex. 5). When Jonathan's passport was issued in October 1951, Fong prepared the petition for petitioner's immigration visa and supporting documents. The future date of Jonathan's marriage to petitioner remained to be inserted in the petition (R. 70-73; Govt. Ex. 6). On October 26, 1951, Jonathan boarded an airplane for Hong Kong with a ticket purchased by Fong (R. 74-75, 242-243).

Upon his arrival in Hong Kong, Jonathan recog-

nized petitioner through the pictures which Fong had given ~~them~~ (R. 79-80). Jonathan sent a cablegram to Fong asking for his divorce paper and some money (R. 81-82). Shortly thereafter, petitioner told Jonathan that she had received money from Fong (R. 82-84). When Jonathan in petitioner's presence telephoned Jean from Hong Kong, petitioner asked if she could say hello to Jean to thank her for what she was doing (R. 403). In another telephone conversation from Hong Kong with Fong, Jonathan stated he would not go through with the marriage. Jonathan testified that Fong told him to "go ahead and go through with it and he would do anything for me"; and that Fong "finally convinced me, and also Chin Bick Wah [petitioner], you know." Immediately afterward, Jonathan discussed the matter with petitioner (R. 85).

On November 29, 1951, Jonathan went through a marriage ceremony with petitioner at Hong Kong. He testified he had no intention of a real marriage, but just "to marry [petitioner] to bring her over for Mr. Fong" (R. 175-176). Jonathan did not live with petitioner as her husband in Hong Kong (R. 91). When he returned to the United States in February 1952, he resumed his permanent residence with Jean (R. 87, 88, 403-404).

In March 1952, petitioner at Hong Kong executed an application for an immigration visa in which she stated that she ~~was married to Jonathan, that her~~ passage to the United States was paid for by her husband Jonathan, and that she intended to join her husband Jonathan in the United States. The state-

ments were charged as false in count six of the indictment, the substantive count under which petitioner was convicted (R. 14-15).

Following the granting of the visa, petitioner arrived in the United States on March 16, 1952, where she was met at the airport by Fong, his relatives, Jonathan, Jean (then six months' pregnant), and their daughter (R. 88, 405-407, 418). At a hotel in Oakland operated by petitioner's relatives, in compliance with Fong's directions, Jonathan signed the register, "Mr. and Mrs. Jonathan Yee." He then went with Jean and their child to their San Francisco home (R. 89-90). Fong remained at the hotel with petitioner (R. 412-413).

At first, petitioner refused to go through with the original plan. On May 31, 1952, she remarried Jonathan at Reno so that she could feel more secure about remaining in the United States (R. 96-97, 106). Jonathan returned immediately to San Francisco to live with Jean, and their second child was born in June 1952 (R. 97, 70). Just prior to the birth of the second child, Fong brought petitioner to visit Jean. Petitioner thanked Jean for "stepping aside and allowing her [petitioner] to come into the United States." Petitioner stated that she wanted at least a $20,000 home as security before going to live with Fong, and that if Jean would wait a little longer, she (petitioner) would "go to Reno and get a divorce from Jonathan" (R. 415-417).

Jonathan and Jean had been having marital difficulties (R. 97). In August 1952, Jonathan took his two children and went to live with petitioner

in Seattle for about one week (R. 98-99, 426-427). Then Jonathan telephoned Jean, begged forgiveness, and Jean went to Seattle to bring Jonathan, the children, and petitioner back home (R. 99-100, 428-431). Fong appeared and left with petitioner and her luggage (R. 439). From that time on, Jonathan lived with Jean (R. 102, 439).

On October 24, 1952, Fong obtained a Reno divorce from his wife, Gee Kee Yip (R. 339). In March 1953, Fong purchased a home in Oakland which he conveyed to petitioner as sole owner (R. 322; Govt. Ex. 22). The utilities were placed in Fong's name (R. 310-316), and about one month later Fong introduced petitioner as his wife to the neighbors (R. 317-321, 323-324).

On July 28, 1953, petitioner finally obtained a Reno divorce from Jonathan (R. 111; Govt. Ex. 11). On October 1, 1953, Fong married petitioner (R. 322; Govt. Ex. 21). In 1955, Jonathan went through another marriage ceremony with Jean (R. 102).

On December 21, 1955, petitioner gave certain statements under oath in an immigration proceeding (R. 187-195; Govt. Ex. 12). Petitioner swore that she and Jonathan had lived together continuously in the Fremont Hotel at Oakland until their trip to Seattle (R. 188). Responding to the question as to how many times her husband Fong had been married, she stated, "I only know of this marriage to me" (R. 189). Petitioner said that she did not remember having any conversations with Fong's first wife before she was divorced from Jonathan (R. 190).

The court admitted in evidence certain declara-

tions and statements by co-conspirators outside petitioner's presence in the last part of 1955 and in April 1956, a few days prior to the return of the indictment on April 11, 1956 (R. 16). These were concerned primarily with plans for denying all elements of the conspiracy and matching testimony to be given before the grand jury. Jean testified as to conversations with Yee Shee around Christmas 1955 (R. 442-443), with Ruby Yee (Fong's sister) on April 4, 1956 (R. 443-444), with Fong and Yee Shee at Jean's home on April 4, 1956 (R. 445-452),[4] with Fong and Yee Shee on April 5, 1956 (R. 452-455), and with Yee Shee on April 6, 1956 (R. 455-456). Jonathan testified as to conversations on April 5, 1956, with Yee Shee and Fong (R. 111-115), and on April 6, 1956, with Yee Shee (R. 115-117). In some instances, the court admitted the declaration without limitation of any kind (R. 442, 445); in others, "solely for the purpose of proving, if it does prove, the existence of a conspiracy" (R. 444, 453, 454); and in others, against the declarant alone, except for such weight as it might have to prove existence of the conspiracy (R. 518, 530-531, 113-114, 116).

In its final charge to the jury, the court instructed in part as follows (R. 571-573):

> The evidence of the acts or statements by any defendant which have been admitted against such defendant as admissions tending to show his or

[4] A government interpreter and an investigator, who overheard this April 4, 1956, conversation while hidden in an adjoining room, also testified as to it (R. 519-529; 532-538).

her guilt must not be considered as against any other defendant in the case. I have already given you some instructions along that line during the course of the trial. I want to caution you, however, particularly that when you are determining, as against any particular defendant, whether or not a conspiracy existed or whether he or she was a party to it, if one did exist, you must not consider and you must put out of your minds all evidence of acts done or declarations made by any co-conspirator out of the presence of the defendant whose guilt is under consideration, unless such acts or declarations were authorized by that defendant. In other words, in respect to the guilt of any particular defendant, the existence of the conspiracy charged in the indictment and that defendant's participation therein, must be established by evidence independent of the acts and declarations of any alleged co-conspirator done out of the presence of the defendant whose guilt is under consideration, unless the acts or declarations were authorized by such defendant.

Of course, once it has been shown beyond a reasonable doubt that any defendant was a party to the conspiracy, he or she is responsible and must be held accountable for every act or declaration of each member of the conspiracy done or made in furtherance of the conspiracy and while the conspiracy continues and before it is terminated. Once the conspiracy is established, and during the existence thereof, as between the parties to that conspiracy, an overt act of one conspirator in furtherance of the object of the conspiracy is an overt act of all the co-conspirtors without any new agreement directed speci-

fically to that act, and each co-conspirator is legally responsible for any act of a co-conspirator that follows incidentally in the execution of the common design as one of its probable and natural consequences, even though it was not intended as a part of the original plan, and even though such defendant was not present at the time of the commission of such act.

On the other hand, after a conspiracy has come to an end, either by the accomplishment of its object, or by the parties abandoning it, evidence of the acts or declarations thereafter made by any of the co-conspirators can only be considered as against the person making the acts or declarations. The declaration or act of a conspirator not in the execution of the common design is not evidence against any of the parties other then the one making such declaration.

Any statement or declaration of an alleged co-conspirator, in order to be binding upon his alleged co-conspirator, must not only have been made during the existence of the conspiracy, but it must likewise have been made in furtherance of its object.

ARGUMENT

1. Petitioner contends that, since the Court of Appeals held that there was a failure of proof regarding the falsity of her representation that Jonathan paid for her passage to the United States (the second of three representations in the substantive count six), the conviction under this count must be reversed. The argument is that the jury might have convicted on a ground as to which there was insufficient evidence (Pet. 7-8).

We think, however, that the evidence was sufficient as to each of the three representations. Neither petitioner nor Jonathan intended a good faith marriage in Hong Kong, and her statement in the application for the immigration visa that she was married to him was clearly false. Cf. *Lutwak* v. *United States*, 344 U.S. 604, 611-612. The jury could, moreover, draw an inference that petitioner knew that Jonathan did not pay for her passage. Such an inference was reasonable from a consideration of the evidence in its entirety, and particularly from the fact that Jonathan did not pay for petitioner's living expenses in Hong Kong after the sham marriage; and that petitioner received money in Hong Kong from Fong (not Jonathan) after Jonathan's cablegram to Fong (see R. 82-84). Petitioner does not even challenge the evidence as to the third false representation, *i.e.*, that she intended to join her husband Jonathan in the United States. The Court of Appeals correctly found the evidence sufficient as to this, and the fact that Jonathan lived with his wife Jean all of the time, with the exception of the one week spent with petitioner in Seattle, amply supports this conclusion.

Even assuming *arguendo* that the evidence was sufficient only as to the third representation, the conviction under the substantive count six should still be affirmed. Unlike the decisions of this Court cited (Pet. 7), count six in the instant case charges one central misrepresentation by a spurious wife that she will join an alleged husband in the United States. Although three statements are charged, they are all part of the central misrepresentation; they are not

separate and unrelated, as in the cited cases. The charge having been laid in three separate assignments, proof of any one of them supports the conviction. *Cf. United States* v. *Otto*, 54 F. 2d 277, 279-280 (C.A. 2); *Arena* v. *United States*, 226 F. 2d 227, 236 (C.A. 9), certiorari denied, 350 U.S. 954; *United States* v. *Myers*, 131 F. Supp. 525, 528 (N.D. Cal.); Wharton on Criminal Law, 12th ed., Sec. 1567.

2. Since the sentences on both counts are concurrent, the conviction may be supported on the substantive count alone. *Cf. Hirabayashi* v. *United States*, 320 U.S. 81, 85; *Pinkerton* v. *United States*, 328 U. S. 640, 641-642, fn. 1. The contention that post-conspiracy declarations in April 1956 were improperly admitted against petitioner without a limiting instruction at the time, would thus not affect the judgment. It cannot be said that error as to the conspiracy count tainted the substantive count. As noted, *supra*, the judge very carefully emphasized that declarations by others must not be considered until the jury found by independent evidence participation in the conspiracy. Petitioner's participation in the conspiracy was shown by her misrepresentations under the substantive count, under which her guilt was "established by evidence independent of the acts and declarations of any alleged co-conspirator done out of [her] presence * * * " (court's charge, *supra*, p. 9).

Petitioner's contention that the court erred in admitting evidence as to Jonathan's illegal entry into the United States in 1939 with the assistance of Fong and Yee Shee by furnishing a "paper fathe " for

Jonathan is also not really in this case since it goes to the conspiracy count (Pet. 16-17, 9-10). This evidence was, in any event, admissible to show Jonathan's motive in going through a sham marriage for persons to whom he considered himself obligated. *Cf. Davis* v. *United States*, 107 Fed. 753, 756 (C. A. 6); *Banning* v. *United States*, 130 F. 2d 330, 337-338 (C.A. 6), certiorari denied 317 U. S. 695.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1957.

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